

GAO

Report to the Ranking Minority
Member, Committee on Homeland
Security and Governmental Affairs,
U.S. Senate

April 2005

EQUAL EMPLOYMENT OPPORTUNITY

The Policy Framework in the Federal Workplace and the Roles of EEOC and OPM





Highlights of [GAO-05-195](#), a report to the Ranking Minority Member, Committee on Homeland Security and Governmental Affairs, U.S. Senate

Why GAO Did This Study

The federal government has created a framework to provide for EEO by prohibiting unlawful discrimination based on such factors as race, color, religion, gender, national origin, age, and disability, and offers redress when discrimination and retaliation have occurred. To further EEO and help bring about a diverse workforce, federal agencies are required to carry out affirmative employment and minority recruitment programs. EEOC and OPM have primary responsibility for ensuring that the government's policies for a fair, equitable, and inclusive workplace are carried out.

In response to a congressional request that GAO provide information on the federal government's performance in promoting EEO and managing its diverse workforce, this report provides information on (1) the statutory and policy framework relating to EEO, affirmative employment, and workforce diversity and (2) the roles and responsibilities of EEOC and OPM within the framework and how these agencies carry out these roles and responsibilities.

GAO is not making recommendations in this report.

www.gao.gov/cgi-bin/getrpt?GAO-05-195.

To view the full product, including the scope and methodology, click on the link above. For more information, contact George H. Stalcup at (202) 512-9490 or StalcupG@gao.gov.

EQUAL EMPLOYMENT OPPORTUNITY

The Policy Framework in the Federal Workplace and the Roles of EEOC and OPM

What GAO Found

Various statutes, executive orders, and other executive policy form the framework of EEO policy that governs civil rights and personnel management in the federal workplace. In 1972 federal workers received statutory civil rights protections when Congress passed the Equal Employment Opportunity Act, which extended to federal workers protections under title VII of the landmark Civil Rights Act of 1964 prohibiting employment discrimination based on race, color, religion, gender, or national origin. The 1972 act also required federal agencies to establish affirmative employment programs to address the underrepresentation of minorities and women in the federal workforce. In 1973 federal employees and applicants for employment with disabilities received employment discrimination protections under the Rehabilitation Act, and federal agencies were required to prepare affirmative employment program plans for the hiring, placement, and advancement of such individuals. The Civil Service Reform Act of 1978 further underscored the government's commitment to EEO, stating that for the federal workforce to reflect the nation's diversity, federal personnel management should follow merit principles by treating employees fairly and equitably, and that personnel actions should be free from prohibited personnel practices, including discrimination. The 1978 act also required agencies to conduct a continuing recruiting program to address minority underrepresentation. Other statutes, executive orders, and executive policy are also part of the federal workplace EEO policy framework.

EEOC and OPM each play important leadership roles within this framework in ensuring EEO in the federal workplace. EEOC is responsible for enforcing federal laws prohibiting discrimination and oversees federal agencies' EEO programs, including their affirmative employment programs. OPM is the government's human capital manager and is responsible for ensuring that personnel management functions follow the merit principles, including those related to EEO. OPM is to assist agencies in carrying out their minority recruitment programs and evaluating the effectiveness of these programs in eliminating minority underrepresentation. EEOC and OPM issue regulations and directives to carry out their responsibilities and exercise oversight by reviewing federal workforce demographic data; reviewing reports from agencies on their progress in meeting program requirements; conducting on-site reviews at federal agencies; and providing technical assistance, training, and guidance. In addition, both agencies publish annual reports on program activities and workforce demographics. Although responsibility for ensuring that EEO is shared among agencies, EEOC has also been charged under statute and executive order with providing leadership and coordination to promote efficiency and eliminate conflict, competition, duplication, and inconsistency.

We provided OPM and EEOC with a draft of this report for their review and comment. OPM said that, in general, the report accurately reflects OPM's current roles and responsibilities. We clarified the report in response to EEOC's comments to indicate that this report focuses on affirmative employment and that we previously reported on EEOC's complaint process responsibilities.

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Abbreviations

ADEA	Age Discrimination in Employment Act of 1967
CLF	Civilian Labor Force
CDPF	Central Personnel Data File
CSC	Civil Service Commission
CSRA	Civil Service Reform Act of 1978
DVAAP	Disabled Veterans Affirmative Action Program
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
EPA	Equal Pay Act of 1963
EPCA	EEO Program Compliance Assessment
FEORP	Federal Equal Opportunity Recruitment Program
GAO	Government Accountability Office
GPRA	Government Performance and Results Act
GS	General Schedule
HCAAF	Human Capital Accountability and Assessment Framework
HCO	Human Capital Officer
MBA	master of business administration
MD	Management Directive
MSPB	Merit Systems Protection Board
No FEAR	Notification and Federal Employee Antidiscrimination and Retaliation Act
OMB	Office of Management and Budget
OPM	Office of Personnel Management
PATCO	PATCOB, not including blue-collar
PATCOB	Professional, Administrative, Technical, Clerical, Other White-collar, and Blue-collar
PMA	President's Management Agenda

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G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

April 29, 2005

The Honorable Joseph I. Lieberman
Ranking Minority Member
Committee on Homeland Security and
Governmental Affairs
United States Senate

Dear Senator Lieberman:

It has long been the policy of the U.S. government to provide a workplace for its employees that is fair, equitable, and free from discrimination and retaliation. Laws provide for equal employment opportunity (EEO) by (1) prohibiting certain personnel practices, including unlawful discrimination based on race, color, religion, gender, national origin, age, and disability and (2) offering avenues of redress when discrimination and retaliation have occurred.¹ To further EEO and help bring about a diverse workforce reflective of all segments of society, federal agencies are required to carry out affirmative employment and minority recruitment programs. Ensuring that federal agencies adhere to the government's laws and policy is primarily the responsibility of the Equal Employment Opportunity Commission (EEOC) and the Office of Personnel Management (OPM).²

Over several decades, the federal government has created a statutory, regulatory, and policy structure for ensuring EEO in federal employment. In this report, prepared in response to your request, we provide information on (1) the statutory and policy framework relating to federal EEO, affirmative employment, and workforce diversity and (2) the roles and responsibilities of EEOC and OPM within the framework and how these agencies carry out these roles and responsibilities. This report primarily focuses on EEOC's affirmative employment responsibilities

¹ Federal employees also have legal protections against reprisal, such as for whistleblowing on waste, fraud, and abuse.

² Although EEOC and OPM are primarily responsible for the enforcement of federal EEO law and policy in the federal workplace, three other agencies—the Office of Special Counsel, the Merit Systems Protection Board, and the Federal Labor Relations Authority—also play a role in ensuring EEO in the federal workplace.

within the framework. We previously reported on EEOC's roles and responsibilities for establishing procedures for handling federal employees' allegations of discrimination and providing for the adjudication of complaints and hearing appeals.³

This is the second report resulting from a series of reviews that respond to your request that we examine the federal government's performance in promoting equal employment opportunity and managing a diverse workforce. In January we reported on leading practices for diversity management.⁴ Our other reviews are examining (1) how EEOC and OPM coordinate with each other in carrying out their EEO-related responsibilities, federal EEO and human capital managers' views of the various EEO-related requirements placed on them, and the leadership that EEOC and OPM provide; (2) how federal agencies measure the results of their EEO programs and diversity initiatives; and (3) examples of how leading diversity management practices are implemented in the private sector.

To accomplish our objectives for this report, we (1) reviewed the statutes, regulations, and policies governing EEO, affirmative employment, and diversity in the executive branch of the federal government and (2) discussed our observations with EEOC and OPM officials.⁵ Our work primarily focused on EEOC and OPM because of their significant roles and responsibilities in ensuring a fair, equitable, and inclusive workplace free from discrimination and retaliation. We did our work from March 2003 through February 2005, in accordance with generally accepted government auditing standards. The details of our objectives, scope, and methodology are in appendix I.

³ GAO, *Equal Employment Opportunity: Discrimination Complaint Caseloads and Underlying Causes Require EEOC's Sustained Attention*, [GAO/T-GGD-00-104](#) (Washington, D.C.: Mar. 29, 2000) and *Equal Employment Opportunity: Complaint Caseloads Rising, with Effects on Future Trends Unclear*, [GAO/GGD-99-128](#) (Washington, D.C.: Aug. 16, 1999).

⁴ GAO, *Diversity Management: Expert-Identified Leading Practices and Agency Examples*, [GAO-05-90](#) (Washington, D.C.: Jan. 14, 2005).

⁵ The application of EEO laws varies between the three branches (executive, legislative, and judicial) of the federal government. This report focuses primarily on the EEO framework applicable to the executive branch.

Results in Brief

The framework relating to EEO in the federal workplace is formed by various statutes, executive orders, and other executive policy that were put in place over several decades. This framework governs civil rights and personnel management and places primary responsibility on federal agencies to provide workplaces that have a culture of fairness, equity, and inclusiveness free from discrimination.

- The hallmark legislation providing civil rights protections for federal workers is the Equal Employment Opportunity Act of 1972, which Congress enacted to address, in part, the continued underrepresentation of minorities and women in the federal workplace. This act extended to federal workers the provisions of title VII of the Civil Rights Act of 1964, the landmark civil rights statute prohibiting employment discrimination based on race, color, religion, gender, or national origin. The 1972 act also required federal agencies to establish affirmative employment programs.
- A year later, the Rehabilitation Act of 1973 extended employment discrimination protections to federal employees and applicants for employment with disabilities, and required agencies to prepare affirmative action program plans for the hiring, placement, and advancement of such individuals.
- The Civil Service Reform Act of 1978, in overhauling federal personnel laws, also underscored the government's commitment to EEO. The act provides (1) that for the federal workforce to reflect the nation's diversity, federal personnel management should follow merit principles, including treating employees fairly and equitably and (2) that personnel actions should be free from prohibited practices, including discrimination. The act also requires agencies to conduct a continuing program for recruiting minorities that is intended to address minority underrepresentation.

Other statutes, executive orders, and executive policy further constitute the federal workplace EEO framework.

EEOC and OPM each play important roles within this framework in ensuring EEO in the federal workplace through their leadership and oversight of federal agencies. EEOC enforces laws prohibiting employment discrimination in the federal workplace and oversees federal agencies' EEO programs, including their affirmative employment programs. As the government's human capital manager, OPM is responsible for ensuring that personnel management functions follow the merit principles, including those aimed at ensuring equal employment opportunity. OPM is also responsible for assisting agencies in carrying out

minority recruitment programs and evaluating their effectiveness in eliminating minority underrepresentation. To carry out their responsibilities, EEOC and OPM issue regulations and directives that, among other things, require agencies to analyze workforce demographics, identify underrepresented groups, develop strategies to address underrepresentation, and prepare annual reports. In addition, EEOC and OPM review federal workforce demographic data to track the representation of the various groups of employees across government, within agencies, and within occupational categories at agencies; review reports from agencies on their status and progress in meeting program requirements; conduct on-site reviews at federal agencies; and provide federal agencies with technical assistance, training, and guidance. Although responsibility for ensuring EEO is shared among agencies, EEOC is responsible under statute and executive order for providing leadership and coordination to promote efficiency and eliminate conflict, competition, duplication and inconsistency.

We provided OPM and EEOC with a draft of this report for their review and comment. OPM, in its comments, said that, in general, the report accurately reflects OPM's current roles and responsibilities. In response to EEOC's comments, we clarified the report to indicate that we had not fully discussed EEOC's responsibility for the federal employees' discrimination complaint process because (1) this report focuses on affirmative employment and (2) we previously reported on the complaint process.

Background

In 1964 Congress passed the landmark Civil Rights Act prohibiting discrimination on the basis of race, color, religion, gender, or national origin in a number of areas, including employment, housing, voting, and education. Title VII of the act addresses employment discrimination and created EEOC.⁶ Congress amended title VII in 1972 to extend employment discrimination protections to federal workers and applicants for federal employment and gave the Civil Service Commission (CSC), OPM's predecessor agency for carrying out human capital functions in the federal government, responsibility for enforcing title VII requirements for federal employment. These responsibilities were later transferred to EEOC under Reorganization Plan No. 1 of 1978 when CSC was abolished and OPM created.⁷ In enacting the 1972 amendments, Congress concluded that the

⁶ Pub. L. No. 88-352, title VII, 78 Stat. 241, 253-266 (July 2, 1964).

⁷ 43 Fed. Reg. 19,807, 92 Stat. 3781 (Feb. 23, 1978).

government had failed to pursue its policy of equal employment opportunity for the federal workforce, noting statistics that minorities and women continued to be denied access to a large number of jobs, particularly at higher-level policymaking and supervisory positions.⁸

In recent years, GAO as well as OPM, the Merit Systems Protection Board (MSPB),⁹ and EEOC have reported on EEO-related issues concerning women and minorities in the federal workforce. In 2001 and 2003, we reported on the representation of minorities and women in the career Senior Executive Service during the 1990s and early 2000s.¹⁰ While we found that the representation of minorities and women had increased during that period, we reported that the representation of minorities and women would not increase substantially by 2007 if then-current SES appointment patterns continued.¹¹ In addition to representation issues, surveys of the federal workforce by OPM and MSPB have revealed that minorities have less favorable perceptions about workplace fairness and equity than nonminorities. Also, EEOC reported that federal employees filed 20,226 discrimination complaints in fiscal year 2003.

Experiences or perceptions of unfair treatment and the lack of opportunity and inclusiveness, whether real or perceived, can undermine the efficient and effective accomplishment of government agencies' mission. Recognizing this, the government has further developed the EEO policy framework for the federal workplace and has established EEOC and OPM as the principal agencies charged with carrying out the government's policy for EEO, affirmative employment, and workforce diversity. For the purpose of this review, we defined EEO, affirmative employment, and workforce diversity as follows:

⁸ Staff of Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 92nd Cong., *Legislative History of the Equal Employment Opportunity Act of 1972* (Comm. Print 1972), at 82-86 and 421-425.

⁹ MSPB is an independent federal agency that adjudicates employee appeals of personnel actions and conducts studies of the federal civil service and other merit systems in the executive branch.

¹⁰ GAO, *Senior Executive Service: Diversity Increased in the Past Decade*, [GAO-01-377](#) (Washington, D.C.: Mar. 16, 2001).

¹¹ GAO, *Senior Executive Service: Enhanced Agency Efforts Needed to Improve Diversity as the Senior Corps Turns Over*, [GAO-03-34](#) (Washington, D.C.: Jan. 17, 2003).

Figure 1: Definitions of EEO, Affirmative Employment, and Workforce Diversity

EEO is the policy embodied in law that requires that employment actions be free from prohibited discrimination, including discrimination on the basis of race, color, religion, gender, national origin, age, disability, and retaliation for filing discrimination claims or other protected activity.

Affirmative employment is a program designed to identify and eliminate discriminatory practices and policies and to ensure EEO. In the federal sector, affirmative employment includes actions by federal departments/agencies to identify and eliminate barriers to EEO in accordance with the policies of EEOC and OPM.

Workforce diversity indicates the extent to which people in a workforce are similar and different from each other, including characteristics protected by law, i.e., race, color, religion, gender, national origin, age, and disability.^a Workforce diversity may also take into account other factors, such as background, education, work roles, and personality.^b

Source: GAO.

^aSee [GAO-05-90](#) for a discussion on managing workforce diversity.

^bEEOC's roles and responsibilities are limited in scope to those groups protected from discrimination by the statutes discussed in the EEO framework.

Statutes, Executive Orders, and Executive Policy Underpin the Government's Framework for EEO in the Federal Workplace

Various statutes, executive orders, and other executive policy form the framework relating to EEO in the federal workplace.¹² This framework, which governs civil rights and personnel management, places primary responsibility on federal agencies to provide workplaces that have a culture of fairness, equity, and inclusiveness free from discrimination.

When the Civil Rights Act of 1964 was enacted, title VII of the act prohibiting employment discrimination did not apply to the federal government as an employer. The government's EEO policy for federal workers had been addressed in executive orders. In particular, Executive Order No. 11478, issued in 1969, stated the government's policy to (1) provide equal opportunity in federal employment for all persons; (2) prohibit discrimination in employment because of race, color, religion, gender, or national origin; and (3) promote the full realization of EEO through a continuing affirmative program in each executive department and agency.¹³ According to the order, the policy of equal opportunity should be an integral part of every aspect of personnel policy and practice

¹² Although the application of EEO laws varies between the three branches (executive, legislative, and judicial) of the federal government, this report focuses primarily on the EEO framework applicable to the executive branch.

¹³ Exec. Order No. 11478, 34 Fed. Reg. 12,985 (Aug. 8, 1969).

in the employment, development, advancement, and treatment of federal civilian employees.

Federal workers and applicants for federal employment received broad statutory protection against employment discrimination with the passage of the Equal Employment Opportunity Act of 1972. The hallmark 1972 act extended to federal workers the protections of title VII of the Civil Rights Act of 1964 prohibiting discrimination on the basis of race, color, religion, gender, or national origin in employment matters, such as recruitment, hiring, wages, promotions, benefits, discipline, discharge, and layoffs.¹⁴ In addition, the 1972 amendments, enacted to address the underrepresentation of minorities and women, require each federal department and agency to prepare plans to maintain an affirmative program of EEO. Under the plans, agencies are required to establish training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential.

The Rehabilitation Act of 1973¹⁵ extended employment discrimination protections to federal employees and applicants for employment with disabilities. Similar to the requirements under title VII, section 501 of the Rehabilitation Act requires federal departments and agencies to prepare affirmative action program plans for the hiring, placement, and advancement of individuals with disabilities. These plans are to be updated annually and describe the extent to which the special needs of employees with disabilities are being met, and the methods used.

A separate program was established for disabled veterans. The Disabled Veterans Affirmative Action Program was authorized by the Vietnam Era Veterans' Readjustment Assistance Act of 1974,¹⁶ as amended. The law requires agencies to have an affirmative action program for the recruitment, employment, and advancement of disabled veterans and requires a separate affirmative action plan for disabled veterans that is to be part of agencies' efforts under the Rehabilitation Act.

¹⁴ Pub. L. No. 92-261, sec. 11, 86 Stat. 103, 111-112 (Mar. 24, 1972), codified at 42 U.S.C. sec. 2000e-16.

¹⁵ Pub. L. No. 93-112, sec. 501, 87 Stat. 355, 390-391 (Sept. 26, 1973), codified at 29 U.S.C. sec. 791.

¹⁶ Pub. L. No. 93-508, sec. 403, 88 Stat. 1578, 1593 (Dec. 3, 1974) codified at 38 U.S.C. sec. 4214.

Besides the Rehabilitation Act and the Disabled Veterans Affirmative Action Program, two executive orders issued in 2000 are to enhance EEO and affirmative employment in the federal government for persons with disabilities. Executive Order No. 13163, *Increasing the Opportunity for Individuals with Disabilities to Be Employed in the Federal Government*,¹⁷ was implemented to support the goals of the Rehabilitation Act and promote an increase in federal employment opportunities for persons with disabilities. Under the order, agencies are required to, among other things, expand outreach efforts, increase efforts to accommodate disabled individuals, and prepare plans to increase the employment opportunities for individuals with disabilities. Executive Order No. 13164, *Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation*,¹⁸ promotes a model federal workplace that provides reasonable accommodation for individuals with disabilities in the application process and for employees to perform the essential functions of a position. Under the order, agencies are required to establish written procedures for processing requests for reasonable accommodation.

The Civil Service Reform Act (CSRA) of 1978,¹⁹ in overhauling federal personnel laws, strengthened protections against discrimination and retaliation in the federal workplace and underscored the government's commitment to ensuring EEO and to addressing underrepresentation. The CSRA stated that in order to provide a federal workforce reflective of the nation's diversity, federal personnel management should be implemented consistent with merit system principles and free from prohibited personnel practices. The CSRA listed nine merit system principles,²⁰ the first two of which are directly applicable to EEO in promoting a fair, equitable, and inclusive workplace:

- Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a workforce from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills after fair and open competition that assures that all receive equal opportunity.

¹⁷ Exec. Order No. 13163, 65 Fed. Reg. 46,563 (July 26, 2000).

¹⁸ Exec. Order No. 13164, 65 Fed. Reg. 46,565 (July 26, 2000).

¹⁹ Pub. L. No. 95-454, 92 Stat. 1111 (Oct. 13, 1978).

²⁰ 5 U.S.C. sec. 2301.

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- All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, gender, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

The CSRA also required that personnel actions should be free from prohibited personnel practices, including discrimination for or against any employee or applicant for employment based on race, color, religion, gender, national origin, age, handicapping condition, marital status, or political affiliation.²¹

The CSRA further emphasized the government's resolve to ensure EEO and to address underrepresentation. The act established the Federal Equal Opportunity Recruitment Program to address underrepresentation²² of minorities in the federal workforce by requiring that executive agencies conduct a continuing program for recruiting minorities.²³

Executive Order No. 13171, *Hispanic Employment in the Federal Government*, issued in 2000, affirmed ongoing policies for equality of opportunity in federal employment and recommended additional policies to eliminate the underrepresentation of Hispanics in the federal workforce.²⁴ The order requires agencies to (1) develop recruiting plans for Hispanics that create a fully diverse workforce and (2) assess and eliminate any systemic barriers to the effective recruitment and consideration of Hispanics. The order established the Interagency Task Force to review best practices, provide advice, assess overall executive branch progress, and recommend further actions in eliminating the underrepresentation of Hispanics.

²¹ 5 U.S.C. sec. 2302.

²² "Underrepresentation is a situation in which the number of members of a minority group designation (determined by the Equal Employment Opportunity Commission in consultation with the Office of Personnel Management) within a category of civil service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage that the minority group constituted within the labor force of the United States, as determined under the most recent decennial or mid-decade census, or current population survey." (5 U.S.C. sec. 7201(a)(1)).

²³ 5 U.S.C. sec. 7201.

²⁴ Exec. Order No. 13171, 65 Fed. Reg. 61,251 (Oct. 12, 2000).

Government policy for dealing with underrepresentation and workforce diversity is also articulated in the President's Management Agenda (PMA). The PMA, implemented in fiscal year 2002, is a strategy for improving the management and performance of the federal government. The PMA contains five governmentwide goals to improve federal management and deliver results, including the strategic management of human capital. Among the standards for success within the strategic management of human capital goal is how well agencies address underrepresentation and implement programs to sustain diversity.

In 2002, acting to address continuing concerns about discrimination and retaliation in the federal workplace, Congress passed the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act.²⁵ The provisions of the act attempt, among other things, to enhance the accountability of EEO management and address the causes of and remedies for workplace conflict that can give rise to discrimination and retaliation complaints. The No FEAR Act holds agencies financially accountable for the costs of judgments and settlements in discrimination cases and also focuses on the policies that agencies have implemented to hold individuals who unlawfully discriminate against others accountable for their conduct. Agencies are also to notify and provide training for their employees on their rights and protections in cases of discrimination and reprisal. In addition, the No FEAR Act stipulates that agencies are to submit annual reports that contain discrimination complaint data, an evaluation of the data to identify underlying causes, and remedial plans to improve their civil rights and complaint programs.²⁶ Furthermore, in enacting this law, Congress intended that federal managers should receive adequate training in managing a diverse workforce, dispute resolution, and other essential communication skills.

Other statutes that protect workers in the private sector also protect federal workers. The Equal Pay Act of 1963 (EPA)²⁷ protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination. The Age Discrimination in

²⁵ Pub. L. No. 107-174, 116 Stat. 566 (May 15, 2002).

²⁶ The requirements of the No FEAR Act went into effect October 1, 2003.

²⁷ Pub. L. No. 88-38, 77 Stat. 56 (June 10, 1963). See 29 U.S.C. sec. 206 (d).

Employment Act (ADEA),²⁸ as amended, protects individuals who are 40 years of age or older from age-based employment discrimination.

EEOC and OPM Have Primary Oversight for EEO

Within the EEO framework, EEOC and OPM play important roles in pursuit of a fair, equitable, and inclusive federal workplace through their leadership and oversight of federal agencies. EEOC's role is founded on its responsibility to enforce federal antidiscrimination laws in the federal and private sectors and OPM's responsibility is founded on its responsibility to serve as the government's human capital manager. Among the many duties that EEOC and OPM carry out in this regard, both issue regulations, directives, and guidance to supplement the EEO framework and establish requirements for agencies. In carrying out their oversight responsibilities, both EEOC and OPM review federal workforce demographic data and annual reports from agencies, conduct on-site visits, and provide guidance and training. In addition, both agencies issue annual reports on federal workforce demographics. Figure 2 provides an overview of EEOC's and OPM's roles within the EEO framework.

²⁸ Pub. L. No. 90-202, 81 Stat. 602 (Dec. 15, 1967), amended by Pub. L. No. 93-259, sec. 28, 88 Stat. 55, 74-75 (Apr. 8, 1974). See 29 U.S.C. secs. 621-634.

Figure 2: Overview of the Roles of EEOC and OPM within the EEO Framework

EEOC
<ul style="list-style-type: none">• Provide leadership and coordination of federal EEO efforts.• Promote equality of opportunity in the federal workplace.• Enforce laws prohibiting employment discrimination.• Establish procedures for handling discrimination complaints and adjudicating complaints.• Establish affirmative employment program requirements.• Provide guidance, training, and technical assistance for agencies.• Monitor federal agencies' compliance with EEO laws.• Review agencies' affirmative employment programs.• Issue annual report on the federal workforce providing data on the representation of minorities, women, and persons with disabilities.
OPM
<ul style="list-style-type: none">• Oversee personnel management in the executive branch.• Build a high-quality and diverse federal workforce.• Enforce merit system principles that ensure that employees work in a fair and discrimination-free environment.• Assess agencies' human capital practices.• Monitor workforce diversity.• Establish requirements for and assist agencies in carrying out equal opportunity recruiting program to address underrepresentation.• Provide agencies with guidance and training.• Evaluate agencies' efforts to eliminate underrepresentation.• Issue annual reports on the representation of minorities, women, and disabled veterans in the federal workforce.

Source: GAO.

Although both EEOC and OPM have responsibilities and carry out activities within the EEO framework, EEOC is responsible under statute and executive order for providing leadership and coordination of federal EEO efforts.

EEOC's Role within the Framework

EEOC's mission is to promote equality of opportunity in the workplace and enforce federal laws prohibiting employment discrimination. In the federal sector, EEOC is responsible for enforcing the employment discrimination prohibitions under title VII of the Civil Rights Act, the Rehabilitation Act, the EPA, and the ADEA. Responsibility for federal-sector EEO had originally belonged to CSC, OPM's predecessor agency, but was transferred to EEOC under Reorganization Plan No. 1 of 1978. Another major EEOC responsibility is establishing procedures for handling federal employees' allegations of discrimination based on race,

Requirements for Federal Agencies

color, religion, gender, national origin, age, or disability, and providing for the adjudication of complaints and hearing of appeals.^{29, 30} In addition, EEOC establishes affirmative employment program requirements, monitors federal agencies' compliance with EEO laws and procedures, and reviews and assesses the effectiveness of agencies' affirmative employment programs.

Pursuant to its authority under title VII of the Civil Rights Act, section 501 of the Rehabilitation Act of 1973, and the ADEA, EEOC is responsible for the annual review and approval of agencies' affirmative employment plans, reviewing and evaluating the operation of all agencies' EEO programs, and periodically obtaining and publishing progress reports. EEOC is also authorized to issue policies, rules, regulations, orders, and instructions to carry out its responsibilities. Under Executive Order No. 13164, EEOC is to provide agencies with guidance to establish their written procedures for processing requests for reasonable accommodation, which are to be submitted to EEOC. In addition, EEOC is to receive the annual reports that agencies are required to prepare under the provisions of the No FEAR Act.

EEOC has implemented statutory requirements under title VII and section 501 of the Rehabilitation Act by issuing a series of Management Directives (MDs) that have provided agencies with instructions, procedures, and guidance.³¹ The most recent of these, MD-715, effective in October 2003, superseded earlier directives.

Under MD-715, EEOC provides policy guidance and standards for agencies for establishing and maintaining effective affirmative employment programs under title VII and section 501 of the Rehabilitation Act.³²

²⁹ Regulations setting forth the policies and procedures for discrimination complaints are contained in 29 C.F.R. part 1614. Additional policies, procedures, and guidance relating to the processing of employment discrimination complaints are contained in EEOC Management Directive 110.

³⁰ We previously reported on EEOC's complaints management responsibilities ([GAO/T-GGD-00-104](#) and [GAO/GGD-99-128](#)).

³¹ EEOC regulations, 29 C.F.R. part 1614, establish the requirements for processing and adjudicating EEO complaints but also provide general guidance on agencies' EEO programs.

³² According to EEOC, MD-715 reflected recent and significant changes in the law, including Supreme Court decisions, at the time it was issued.

According to a senior EEOC official, MD-715 upgraded standards and methods by which agencies measure and analyze workforce diversity as they continue to take steps toward increasing the employment of underrepresented groups. EEOC separately issued instructions for implementing MD-715 requirements for (1) a “Model EEO Program” to achieve a discrimination-free and inclusive workplace, (2) identifying and eliminating barriers to equal participation, and (3) reporting.

In MD-715, EEOC established six essential elements for a Model EEO Program. According to EEOC’s MD-715 instructions, attaining a Model EEO Program will provide the infrastructure for an agency to achieve the ultimate goal of a discrimination-free work environment, characterized by an atmosphere of inclusion and free and open competition for employment opportunities. Table 1 shows these elements and the major responsibilities that EEOC places on agencies in incorporating them into the EEO program.

Table 1: Elements of a Model EEO Program and Major Agency Responsibilities for the Model Program

Model EEO Program element	Major agency responsibilities
Demonstrated commitment from agency leadership	<ul style="list-style-type: none"> • Having a definitive and meaningful statement of EEO policy. • Allocating sufficient resources to the EEO program. • Ensuring that all employees are informed of EEO policies and procedures.
Integration of EEO into the agency’s strategic mission	<ul style="list-style-type: none"> • Having agency managers be an integral part of the agency’s EEO program, with the EEO office providing managers with direction and guidance and monitoring key activities. • Structuring an EEO program so as to maintain a discrimination-free workplace and support of the agency’s strategic mission. • Ensuring EEO officials’ involvement in critical workplace decisions, access to senior staff, and participation in meetings involving critical personnel decisions. • Including an appropriate reporting structure, with the agency’s EEO director having a regular and effective means of informing the agency head and other management officials of the effectiveness, efficiency, and legal compliance of the EEO program.
Management and program accountability	<ul style="list-style-type: none"> • Hiring of managers and supervisors who have the skills needed to supervise in a diverse workplace. • Making clear that all managers and supervisors share responsibility with EEO program and human resources officials for the successful implementation of EEO programs. • Making EEO an element in supervisors’ and managers’ performance evaluations, with successful performance for all managers and supervisors contingent on efforts to achieve a workforce free of discrimination. • Providing for effective coordination between the agency’s EEO office and other management programs, such as the Federal Equal Opportunity Recruitment Program, the Alternative Dispute Resolution office, and the Employee Relations office.

Model EEO Program element	Major agency responsibilities
Proactive prevention of unlawful discrimination	<ul style="list-style-type: none"> • Self assessing the EEO program to monitor progress, prevent discrimination, and identify barriers to free and open competition. • Developing a comprehensive antiharassment policy that includes informing employees of prohibited behavior, providing multiple avenues of redress, and making clear that acts of harassment will not be tolerated. • Having an effective reasonable accommodation procedure to handle the needs of employees with disabilities.
Efficiency	<ul style="list-style-type: none"> • Having a fair, impartial, and neutral complaint resolution system that includes access to alternative dispute resolution and timely compliance with orders from EEOC and other adjudicatory bodies (such as the Merit Systems Protection Board and the Federal Labor Relations Authority). • Having an effective system for collecting and analyzing data on workforce composition and on discrimination complaints and their resolution. • Consulting with EEOC to learn about best EEO practices in other agencies.
Responsiveness and legal compliance	<ul style="list-style-type: none"> • Certifying to EEOC the agency's full compliance with EEO laws, regulations, and other guidance. • Annual reporting to EEOC of EEO efforts and accomplishments and compliance with EEOC orders.

Source: EEOC.

EEOC MD-715 requires agencies to complete a self assessment checklist to determine the extent to which their program meets Model EEO Program requirements.

Under MD-715, EEOC also requires agencies to systematically identify, examine, and remove barriers to equal participation at all levels of the workforce. EEOC defines a barrier as an agency policy, principle, practice, or condition that limits or tends to limit employment opportunities for members of a particular race, gender, or ethnic background, or is based on an individual's disability status.

MD-715 instructions to agencies contain steps for agencies to follow in identifying and eliminating barriers. The first of these is to analyze data concerning the agency's workforce to determine if there are any disparities in the representation of any particular group (e.g., women, minorities, and individuals with disabilities). EEOC instructs agencies to analyze workforce data and personnel actions on several levels as figure 3 shows.

Figure 3: EEOC Instructions to Agencies for Analysis of Workforce Data and Personnel Actions

- Analyze data concerning agency workforce, looking at participation rates of the employee population by race, national origin, gender, and disability to determine if any particular group is being underutilized by the agency in a particular occupation or at a particular grade or pay level.
- Compare overall workforce demographic profile with the national Civilian Labor Force (CLF), which is composed of those 16 and older who are employed or looking for work and not in the military or are institutionalized.
- Analyze workforce broken out by nine major occupational categories,^a comparing their workforce composition in each category with the equivalent category in the CLF.^b
- Compare “major occupations” within the workforce (i.e., occupations that are mission relevant and heavily populated) with relevant CLF data based on the occupation and the geographic location of the agency’s area of recruitment.
- Compare the applicant pool with the relevant CLF appropriate for the occupation and geographic area being recruited.
- Compare data on promotions, training opportunities, performance incentives, and separations with data for the total workforce (and, in the case of promotions, with data for the workforce in “feeder grades” below the level of the promoted positions).

Source: EEOC.

^aThe categories include officials and managers; professionals; technicians; sales; administrative support workers; craft workers, operatives, laborers, and service workers.

^bEEOC advises agencies to use the Census 2000 EEO Data Tool to obtain CLF data for comparative purposes. This tool, available to agencies through the Census Web site (www.census.gov/eo2000), allows agencies to obtain and sort data from the Census 2000 Special EEO Tabulation, which was created by a consortium of EEOC, OPM, and the Labor and Justice Departments. This tabulation serves as the primary external benchmark for comparing the race, ethnicity, and gender of an organization’s workforce with that of the analogous external labor market, within a specified geography and job category.

Using their workforce analysis and information from other sources, such as employee surveys, past discrimination complaints, and input from employees and employee groups, EEOC, in MD-715, instructs that agencies should review their employment policies and procedures in their ongoing obligation to eliminate barriers to identify those that might be reducing opportunities for employees but are not essential to an agency’s mission. One such example is a requirement that all persons holding a program analyst position hold a master of business administration (MBA) degree, with no allowance being made for equivalent experience. EEOC’s MD-715 instructions also state that the barrier analysis should deal with matters relating to persons with disabilities, such as the effectiveness and efficiency with which the agency processes requests for reasonable accommodation under the Rehabilitation Act. According to the instructions, after an agency has identified barriers, it should devise a plan aimed at eliminating the barriers that are not job related or modifying the

adverse impact of those that are job related. For example, an agency that has a low number of African-American women as program analysts at the General Schedule (GS) grade 13 level and above compared with those at grade 12 and below might examine whether the requirement for an MBA for promotion to grade 13 might not be necessary and might be a barrier.

Under previous management directives, EEOC required federal agencies under its jurisdiction to report annually on their EEO programs and the status of women, minorities, and persons with disabilities in the agency.³³ Similarly, agency reports required under MD-715 are to include workforce data collected and analyzed by race, gender, national origin, and disability; a description of identified barriers; and a plan for eliminating or moderating them. In addition, agencies must evaluate their EEO programs using EEOC's checklist and certify to EEOC that they have done so (although they do not have to submit the checklist).

EEOC Oversight

EEOC exercises oversight by reviewing the reports that agencies submit annually. EEOC uses the government's Central Personnel Data File (CPDF), maintained by OPM, to check agencies' workforce data submissions and track the representation of minorities, women, and persons with disabilities across government, within agencies, and within occupational categories at agencies.

EEOC also conducts periodic on-site reviews of agencies' EEO activities. EEOC's decision on where to do such reviews is based in part on data from agencies' annual reports but also on newspaper reports, the volume and nature of individual EEO complaints, and letters from the public. EEOC's on-site reviews examine a certain part of an agency's EEO program, such as affirmative employment or the complaint process, at the agency's headquarters or a field facility. During fiscal years 2002 to 2004, EEOC conducted 67 on-site reviews. According to EEOC officials, the agency is developing a tool to systematically evaluate agencies' EEO programs, to be known as the EEO Program Compliance Assessment

³³ Up through fiscal year 2002, agencies were required to file a report for women and minorities under MD-714 and a separate report for persons with disabilities under MD-713. The final reports under MD-713 and 714 were for fiscal year 2002. In order to facilitate the transition to MD-715, EEOC did not require agency reports for fiscal year 2003. The first reports required under MD-715 covering fiscal year 2004 were to have been filed by January 31, 2005. According to EEOC, 120 agencies and 81 major subcomponents of certain agencies were required to file reports under MD-715 for fiscal year 2004. As of April 12, 2005, 125 of 201 required reports from agencies and major subcomponents had been filed with EEOC.

(EPCA). This assessment will be based on the elements of a Model EEO Program set forth in MD-715. According to a senior EEOC official, EEOC intends for the EPCA to supplement the evaluation of federal agencies under the human capital standards of the PMA by providing more-detailed measurements of agencies' EEO programs.³⁴

In addition, EEOC, in the fall of 2003, began a pilot project at six federal agencies to work with selected agencies on an ongoing basis. Under this program, known as the Customer Relationship Management Program, multidisciplined teams of EEOC staff work with the agencies on affirmative employment, complaint management, and other key areas pertaining to EEO. The teams also meet with the agencies and help them analyze their data regarding EEO. In commenting on a draft of this report, EEOC said it had completed its evaluation of the Customer Relationship Management Program and expanded the project to include six additional agencies.

EEOC also provides federal agencies with guidance and technical assistance through publications, such as guidance on reasonable accommodation,³⁵ and through training in areas such as EEO law and practice, complaint adjudication and management, alternative dispute resolution, and compliance with the requirements of MD-715. EEOC's Web site also provides information on EEO law and regulations, as well as EEO policies and directives. In addition, according to EEOC, the agency conducts outreach to employer and employee groups to provide general information about EEOC, its mission, the employment discrimination laws enforced by EEOC, and the complaint process.

EEOC Reporting

EEOC reports data on EEO in federal agencies in its *Annual Report on the Federal Workforce*. The report includes governmentwide and federal agency data for the fiscal year for which it was issued and a comparison of data from 10 years previously. In addition to discrimination complaint data, the report includes data on workforce participation by minorities, women, and persons with disabilities.³⁶ These data are reported

³⁴ EEOC has not been assigned responsibility for any elements of the PMA. EPCA, if implemented, would involve a separate process.

³⁵ EEOC, *Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation* (Oct. 20, 2000).

³⁶ In previous annual reports, EEOC compared federal workforce data to the CLF and also reported data by Professional, Administrative, Technical, Clerical, Other White-collar, and Blue-collar (PATCOB) occupational categories.

governmentwide and by agency, overall and for upper-level employees (GS-14 and GS-15 and Senior Pay Level). EEOC also reports data on the number of workers in major occupations (mission-oriented occupations with 100 or more employees) in selected agencies. These occupations, according to EEOC, frequently serve as gateways into upper management positions.

OPM's Role within the Framework

OPM is the government's human capital manager, and its mission is to build a high-quality and diverse federal workforce based on merit system principles. The agency was created by the Civil Service Reform Act and Reorganization Plan No. 2 of 1978³⁷ to assume the personnel management tasks of the abolished CSC. Title 5 of the U.S. Code empowers OPM to oversee personnel management in the executive branch. Specifically, OPM is tasked with executing, administering, and enforcing civil service laws and regulations, including the merit system principles that require fair and equitable treatment and equal opportunity, and prohibit discrimination in all aspects of federal employment.³⁸ Title 5 also requires OPM to establish systems for assessing federal agencies' management of human capital.

OPM is responsible for several EEO-related programs. Under title 5 of the U.S. Code, OPM is to assist agencies in carrying out their Federal Equal Opportunity Recruitment Program (FEORP) activities and to oversee and evaluate agencies' programs to determine their effectiveness in eliminating minority underrepresentation. OPM has similar responsibilities for the Disabled Veterans Affirmative Action Program (DVAAP).³⁹ Under Executive Order No. 13171, aimed at eliminating the underrepresentation of Hispanics in the federal workforce, OPM's responsibilities include taking the lead in promoting diversity, providing guidance, and chairing the Interagency Task Force on Hispanic Employment in the Federal Government. Executive Order No. 13163 (1) requires OPM to provide guidance on increasing the opportunities for individuals with disabilities employed in the federal government and (2) required agencies to submit their plans to increase the employment opportunities for individuals with disabilities to OPM. Moreover, the President has charged OPM, in conjunction with the Office of Management and Budget (OMB), with

³⁷ 43 Fed. Reg. 36,037, 92 Stat. 3783 (May 23, 1978).

³⁸ 5 U.S.C. sec. 1103(a)(5).

³⁹ 38 U.S.C. sec. 4214.

Requirements for Agencies

assessing agencies' performance in meeting the President's Management Agenda (PMA) standards dealing with reducing underrepresentation and implementing processes to sustain workforce diversity.

The CSRA requires agencies to conduct a continuing program for recruiting minorities—the FEORP—and required OPM to issue implementing regulations for the program.⁴⁰ Among OPM's requirements is that agencies have an equal opportunity recruiting plan for minorities and women.⁴¹ OPM's regulations require that the FEORP plans be incorporated into the affirmative employment plans that EEOC requires under MD-715 in accordance with title VII requirements. However, the FEORP plans must remain a separable part of the affirmative employment plans so that the former can be submitted to and reviewed by OPM.⁴² Key elements of the FEORP plans are shown in figure 4.

Figure 4: Key Elements of Agencies' FEORP Plans

- Workforce analysis. Determinations of underrepresentation of minorities and women, and development of quantifiable indexes for measuring progress toward eliminating underrepresentation. In making determinations of underrepresentation, agencies are to use the relevant CLF as a comparison.
- Workforce planning. Occupations and grade levels of occupations to be filled in the future and an assessment of the internal availability of candidates.
- Recruitment. Methods the agency intends to use to locate and develop minority and women candidates for each category of underrepresentation.
- Barrier removal. Efforts that will be undertaken to identify jobs that can be redesigned so as to improve opportunities for minorities and women.
- Training and job development. Programs the agency will use to provide skills, knowledge, and abilities to qualify increased numbers of minorities and women for occupational series and grade levels where they are significantly underrepresented.

Source: GAO analysis of 5 C.F.R. sec. 720.205.

Agencies are also required to submit annual FEORP reports to OPM.⁴³ For fiscal year 2003, OPM required agencies to provide data on employee participation in agencywide and governmentwide career development programs broken out by race, national origin, gender, and grade level. In

⁴⁰ See 5 U.S.C. sec. 7201 and 5 C.F.R. part 720, subparts A and B.

⁴¹ The CSRA established the FEORP to address minority underrepresentation through a continuing recruitment program, and OPM, through its regulations, requires agencies' recruiting programs to include women as well. 5 C.F.R. sec. 720.205.

⁴² 5 C.F.R. sec. 720.205 (a).

⁴³ 5 C.F.R. sec. 720.207.

addition, OPM required agencies to provide a narrative report identifying areas where the agencies had been most successful in recruiting, hiring, and formal training of minorities and women, and how they were able to achieve those results.⁴⁴

The Vietnam Era Veterans' Readjustment Assistance Act authorizing the DVAAP requires agencies to have an affirmative action program for the recruitment, employment, and advancement of disabled veterans, and OPM regulations for the DVAAP⁴⁵ place certain requirements on agencies. OPM requires agencies to analyze workforce data to identify problem areas and deficiencies in the employment and advancement of disabled veterans. OPM regulations require that an agency's affirmative action plan for disabled veterans, which is to be part of its affirmative employment plan for persons with disabilities that EEOC requires under MD-715 in accordance with section 501 of the Rehabilitation Act, describe a number of things, including recruiting methods; how the agency will provide or improve internal advancement opportunities for disabled veterans; and how the agency will monitor, review, and evaluate its planned efforts. OPM also requires agencies to submit annual accomplishment reports that are to include an explanation of the agency's progress in implementing its plan; an identification of areas where progress has not been shown; and reasons for the lack of progress, along with specific plans for overcoming obstacles to progress.⁴⁶

Executive Order No. 13171 on Hispanic representation in the federal government requires agencies to carry out various activities, including developing recruiting plans for Hispanics; assessing and eliminating systemic barriers to recruiting and considering Hispanics; and implementing the goals of the Hispanic Employment Initiative Nine-Point

⁴⁴ OPM requires annual FEORP reports from agencies with employees in the General Schedule, Federal Wage System, or Senior Level pay plans (the latter including the Senior Executive Service and equivalent pay plans but not those under the Executive Schedule). According to OPM's fiscal year 2003 report on the FEORP, 70 agencies were required to file FEORP reports in that year. As of July 13, 2004, 43 agencies had submitted fiscal year 2003 FEORP reports to OPM.

⁴⁵ 5 C.F.R. part 720, subpart C.

⁴⁶ According to OPM's fiscal year 2003 report, 87 agencies were required to submit DVAAP accomplishment reports.

Plan,⁴⁷ which OPM issued. In implementing its responsibilities under the executive order, OPM asked agencies to provide information on activities and accomplishments in implementing the Hispanic Nine-Point Plan; top practices in strategic human capital management and planning that best help improve the recruitment, retention, and promotion of Hispanics; and how these practices align with the agency's Annual Performance Plan under the Government Performance and Results Acts (GPRA).⁴⁸

To guide agencies toward achieving the PMA human capital standards for success, OPM developed the Human Capital Accountability and Assessment Framework (HCAAF). The HCAAF does not establish requirements per se; rather, it establishes suggested performance elements and measures that OPM considers in assessing an agency's progress in meeting the human capital standards of success of the PMA. Suggested performance elements and measures deal with the PMA standard on reducing underrepresentation and implementing programs to sustain diversity. Some of these are described in figure 5:

⁴⁷ Some of the elements of the Nine-Point Plan are supporting and implementing the White House Initiative on Educational Excellence for Hispanic Americans; providing students, faculty, and the Hispanic community with employment information; and promoting participation of Hispanic employees in career development programs.

⁴⁸ Pub. L. No. 103-62, 107 Stat. 285 (Aug. 3, 1993).

Figure 5: Selected HCAAF Elements Relating to the PMA Standard of Reducing Underrepresentation and Establishing a Process to Sustain Workforce Diversity

- The agency identifies and monitors any underrepresentation of minorities, women, disabled veterans, and individuals with severe disabilities. The agency develops and implements diversity outreach plans to improve representation. The agency tracks and analyzes workforce diversity trends.
- The agency analyzes workforce demographics in mission-critical occupations, including the size and distribution of workforce by grade/series/geographical location, type of positions occupied, pay plan, average age, average grade, retirement (eligible and expected), separations, turnover, etc.
- The agency has a comprehensive strategic workforce plan that addresses both current and future workforce competency requirements. Human capital strategies are derived from workforce demographic studies, agency staffing information, competitive sourcing studies, and analyses of the effectiveness and efficiency of the agency's organizational structure. Human capital workforce strategies include descriptions for recruiting, hiring, deployment, retention, and other staffing initiatives.
- An analysis of workforce demographics (including the Senior Executive Service) helps inform succession plans. The analysis includes data such as average grade/age/length of service, distribution of the workforce (by series, grade, gender, race/national origin, and supervisory status), turnover rates, and retirement eligibility.
- The agency monitors the use of competitive and noncompetitive appointments and promotions, temporary appointments, conversions, etc., including a breakdown by race/national origin and gender for compliance with merit system principles and avoidance of prohibited personnel practices.
- The agency has mechanisms in place to track and evaluate recruitment, hiring, merit promotion, and retention activities. The demographics of candidates (age, race/national origin, and gender) are compared with the demographics of the agency workforce.^a
- The agency tracks statistical data related to separations for performance, the number of removals and downgrades, and the number of denials of within-grade increases.

Source: Human Capital Accountability and Assessment Framework.

^aOPM takes the position that agencies are not required to collect race, national origin, gender, and age information on applicants.

OPM Oversight

In carrying out its oversight responsibilities, OPM reviews the reports that agencies submit for the FEORP, for the DVAAP, and in response to Executive Order No. 13171 relating to Hispanic employment in the federal government. In addition, OPM will review CPDF data in conjunction with its review of agencies' FEORP submissions. For the FEORP, OPM will analyze agencies' workforces by Professional, Administrative, Technical, Clerical, Other White-collar, and Blue-collar (PATCOB) occupational categories to determine where underrepresentation may exist. In addition, OPM provides federal agencies with CPDF data on the employment of disabled veterans so that agencies can identify problem areas and deficiencies in the employment of such veterans.

OPM also exercises oversight through on-site audits of federal agencies' human capital operations on a regular schedule, with an audit of each agency about once every 3 years, according to OPM officials. These audits focus on compliance with the merit system principles, according to OPM officials, and thus they have an EEO element, since nondiscrimination is part of the merit system principles. The audits have included an evaluation of agencies' EEO efforts, according to OPM's *Oversight & Effectiveness Evaluation Handbook*. The "compliance core" of each audit includes verification that an agency has a FEORP program and a program for affirmative employment. According to a senior OPM official, OPM plans to expand its coverage of affirmative employment and EEO in its audits, in view of the implementation of the HCAAF and the PMA. During fiscal years 2001 to 2003, OPM conducted 336 on-site reviews.

OPM has also instituted direct and continuing oversight of federal agencies through a network of Human Capital Officers (HCOs) who work with agencies' human capital staff, according to OPM officials. A senior OPM official said that a major responsibility for each HCO is to monitor agencies' compliance with the HCAAF and the human capital standards of the PMA. The HCOs examine workforce diversity as a part of their continuing review of human capital programs because it is an integral element of both the HCAAF and PMA standards. In particular, according to senior OPM officials, the HCOs analyze workforce data from the CPDF and from relevant responses to the OPM Human Capital Survey, and will also examine information from the FEORP and other reports. The HCOs then evaluate agencies' diversity plans to alleviate weaknesses in the agencies' present diversity status. The HCOs also participate in quarterly meetings with agency, OPM, and OMB staff, during which the agencies' progress according to PMA standards is evaluated.

The HCOs also provide agencies with advice and guidance concerning their performance plans and programs. In addition, OPM provides federal agencies with guidance and technical assistance related to EEO through publications such as its guide on workforce diversity⁴⁹ and other information available on its Web site, and through its training courses that cover many aspects of human capital management, including affirmative employment and diversity.

⁴⁹ OPM, *Building and Maintaining a Diverse, High-Quality Workforce: A Guide for Federal Agencies*.

OPM Reporting

OPM prepares several reports containing workforce demographics, including data on minorities, women, and persons with disabilities in the federal workforce. *The Fact Book* contains general statistical information on the federal workforce. It includes employment data for women, minorities, and persons with disabilities for the executive branch as a whole and also broken down by department, PATCO⁵⁰ occupational category, and GS grade. It also has a comparison of the representation of minorities and women in federal civilian employment with their composition in the CLF.

The annual OPM FEORP report also contains statistical information on women and minorities in the federal workforce (it does not include statistics on persons with disabilities). OPM derives these data directly from the CPDF. There is a comparison of federal minority and women representation with the CLF, as in *The Fact Book*, which shows their distribution by PATCOB occupational categories. The FEORP report also has a comparison of the women and minority representation in 18 executive departments and 21 independent agencies with the relevant CLF for that agency. In addition to the statistical reporting and analysis, the FEORP report contains descriptions of selected initiatives that agencies reported to have taken in support of FEORP. The annual *Report on Employment of Veterans in the Federal Government* is similar to the FEORP report but is focused on disabled and other veterans.

In 2001 OPM began reporting separately on Hispanic federal employment. OPM has issued semiannual statistical data reports on Hispanic employment, which include data on Hispanics in federal employment governmentwide and in selected agencies, and on new Hispanic hiring, both in general and under two programs: the Student Career Experience Program and the Bilingual/Bicultural Program. As required by Executive Order No. 13171, OPM also issues an annual report on Hispanic federal employment. This report combines a semiannual report with a detailed review of practices that affect Hispanic representation in the federal workforce, specifically in the areas of community outreach, recruitment, career development, and accountability.

⁵⁰ PATCOB, not including blue-collar workers.

Coordination of Federal EEO Activities

In recognition of the fact that multiple agencies are involved in carrying out federal employment laws and policy, EEOC was given leadership for all federal EEO programs and activities. Reorganization Plan No. 1 of 1978, which was implemented in 1979, made EEOC the principal federal agency responsible for enforcing federal EEO laws for the public and private sectors. The plan also abolished the Equal Employment Opportunity Coordinating Council⁵¹ and transferred its duties under 42 U.S.C. section 2000e-14 to EEOC. The Council had been responsible for promoting efficiency and eliminating conflict, competition, duplication, and inconsistency in the implementation and enforcement of EEO legislation, orders, and policies.

Executive Order No. 12067, *Providing for Coordination of Federal Equal Employment Opportunity Programs*, which was issued in 1978, implemented the Reorganization Plan, detailed coordination principles, and clarified EEOC's role in this regard.⁵² Under this order, EEOC is to

- provide leadership and coordination to the efforts of federal departments and agencies to enforce all federal statutes, executive orders, regulations, and policies that require EEO; and
- strive to maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistency among the operations, functions, and jurisdictions of the federal departments and agencies having responsibility for enforcing such statutes, executive orders, regulations, and policies.

In addition, EEOC is to consult with and utilize the special expertise of federal departments and agencies with EEO responsibilities and cooperate with such departments and agencies in the discharge of their equal employment responsibilities.

In a forthcoming report, we will discuss how EEOC and OPM coordinate with each other in developing policy, providing guidance, and exercising oversight in the areas of EEO, affirmative employment, and workforce

⁵¹ The 1972 Equal Employment Opportunity Act established the Equal Employment Opportunity Coordinating Council. In addition to the EEOC Chairman, the Council was composed of the Secretary of Labor, the Attorney General, the Chairman of the Civil Service Commission (the predecessor to OPM), and the Chairman of the U.S. Civil Rights Commission.

⁵² Exec. Order No. 12067, 43 Fed. Reg. 28,967 (June 30, 1978).

diversity. That report will also present results from a governmentwide survey of EEO and human capital professionals, including their experiences and views of the various requirements placed on them; the extent to which they believe these requirements contribute to their agencies' EEO, affirmative employment, and workforce diversity objectives; and the extent to which assistance from EEOC and OPM has helped their agency in achieving the stated objectives.

Agency Comments and Our Evaluation

We provided EEOC and OPM with a draft of this report for their review and comment. In written comments, the Director of EEOC's Office of Federal Operations said that, in several respects, the report did not fully reflect EEOC's roles, responsibilities, and activities in the federal workplace. Overall, we believe that the report accurately reflects EEOC's role and responsibilities within the EEO framework. However, one major area of responsibility that EEOC noted was not fully reflected in this report relates to its adjudication of federal employee discrimination complaints. We concur that EEOC plays an important role in this area. We previously reported on EEOC's complaints management responsibilities and have clarified the report to note that these responsibilities are not discussed in depth. EEOC also provided technical comments, which we incorporated in the report where appropriate.

OPM provided comments in an e-mail from the Deputy Chief of Staff, Office of the Director. OPM said that, in general, the report accurately reflects OPM's current roles and responsibilities. OPM provided technical comments, which we incorporated in the report where appropriate.

As agreed with your office, unless you release the report's contents earlier, we plan no further distribution of it until 30 days from its issue date. We will then send copies to the Chair of EEOC, the Acting Director of OPM, and other interested parties. Copies will be made available to others upon request. This report will also be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-9490. Other staff who made major contributions to this report are listed in appendix III.

Sincerely yours,

A handwritten signature in black ink that reads "George H. Stalcup". The signature is written in a cursive style with a large initial "G" and a distinct "H" and "S".

George H. Stalcup
Director, Strategic Issues

Appendix I: Objectives, Scope, and Methodology

Our objectives were to identify (1) the statutory framework under which the Equal Employment Opportunity Commission (EEOC), the Office of Personnel Management (OPM), and line agencies operate in promoting equal employment opportunity (EEO) and pursuing affirmative employment and workforce diversity objectives and (2) the roles and responsibilities of EEOC and OPM within the framework and how these agencies carry out these roles and responsibilities. This report primarily focuses on EEOC's affirmative employment responsibilities within the framework. We previously reported on EEOC's roles and responsibilities for establishing procedures for handling federal employees' allegations of discrimination and providing for the adjudication of complaints and hearing appeals.¹

For our first objective, we reviewed those sections of the U.S. Code and executive orders that pertain to EEO, affirmative employment, and workforce diversity in the executive branch of the federal government. Although the application of EEO laws varies between the three branches (executive, legislative, and judicial) of the federal government, we focused primarily on the EEO framework applicable to the executive branch. We also reviewed other presidential policies and documents, including Reorganization Plan No. 1 of 1978 and the President's Management Agenda (PMA).

For our second objective, we reviewed the provisions of statutes, executive orders, and policies that assigned oversight duties and responsibilities to EEOC and OPM. In addition, we reviewed the Code of Federal Regulations and policy directives or standards issued by EEOC and OPM to supplement the requirements of statutes and executive orders. These included the following:

- EEOC Management Directives (MDs) dealing with affirmative employment. In October 2003, during the course of our review, EEOC issued MD-715, which, issued under EEOC's authority granted by title VII of the Civil Rights Act of 1964 and section 501 of the Rehabilitation Act of 1973, set forth guidance on affirmative employment for federal agencies. MD-715 superseded MD-712 and MD-713, dealing with persons with disabilities, and MD-714, dealing with minorities and women.

¹ [GAO/T-GGD-00-104](#) and [GAO/GGD-99-128](#).

- The regulations that OPM promulgated, under its authority granted by the Civil Service Reform Act of 1978, for the Federal Equal Opportunity Recruitment Program for the recruitment of minorities and women.
- The regulations that OPM promulgated, under its authority granted by the Vietnam Era Veterans' Readjustment Assistance Act, for the Disabled Veterans Affirmative Action Program.
- Instructions that OPM issued for implementing the requirements of Executive Order No. 13171, *Hispanic Employment in the Federal Government*.
- The Human Capital Assessment and Accountability Framework, which OPM uses to evaluate agencies on their human capital performance.
- The human capital section of the PMA. The Office of Management and Budget uses a scorecard based on this agenda to evaluate agencies' overall management performance and has delegated the human capital portion of the scorecard review to OPM.

We also spoke with EEOC officials at the senior and staff levels involved in oversight. At OPM, our discussions were generally limited to senior staff responsible for supervising oversight. We also reviewed guidance provided for these staff. We discussed our observations with senior officials of EEOC and OPM.

We did our work from March 2003 through February 2005, in accordance with generally accepted government auditing standards.

Appendix II: Comments from the U.S. Equal Employment Opportunity Commission



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

March 31, 2005

Mr. George Stalcup
Director, Strategic Issues
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Mr. Stalcup:

Thank you for providing EEOC the opportunity to submit comments on the Government Accountability Office's (GAO) proposed report entitled *Equal Employment Opportunity: The Policy Framework in the Federal Workplace and the Roles of EEOC and OPM* (GAO-05-195). We have several comments on this proposed report.

We believe that the report in several respects does not fully reflect EEOC's roles, responsibilities and activities in the federal workplace. EEOC, by federal statute and Executive order, has primary responsibility for leadership and coordination of the oversight of the EEO programs of federal agencies.

Moreover, EEOC has primary responsibility for the enforcement of anti-discrimination laws in the federal sector, playing a central and unique role in adjudicating cases of employment discrimination by providing hearings at the investigative stage, reviewing appeals from final action taken by agencies in discrimination complaints, and by issuing binding decisions on federal agencies.

In FY 2004 alone, EEOC processed over 11,000 hearing requests and 8,000 appeals. Yet, Management Directive 110, one of EEOC's most significant policy directives for the federal sector, is mentioned only in a footnote. By contrast, OPM's five policy initiatives (FEORP, DVAAP, E.O. 13171, E.O. 13163, and the Presidential Management Agenda (PMA)) are discussed in the text.

The table which sets forth EEOC's key roles does not include EEOC's hearings and appeal complaint adjudication roles. It also omits EEOC's outreach and technical assistance to the federal workforce on the requirements of Title VII, the Rehabilitation Act, the Age Discrimination in Employment Act and the Equal Pay Act. This has been an area in which EEOC has significantly increased its efforts.

Mr. George Stalcup
Page Two

I note that EEOC has completed its evaluation of the Relationship Management Project mentioned in the report. Based on the results of the project, EEOC has expanded the project to include six additional agencies.

We have several other specific editorial comments, which we have enclosed as an attachment to this letter.

Thank you for the opportunity to provide comments to this report.

Sincerely,



Carlton M. Hadden
Director, Office Federal Operations

Attachment

Attachment

Additional comments on GAO's proposed report entitled *Equal Employment Opportunity: The Policy Framework in the Federal Workplace and the Roles of EEOC and OPM* (GAO-05-195)

- Page 1, ¶ 1 The wording of this section suggests that § 717 only prohibits illegal discrimination and established a redress program, when, in fact, it requires much more, including training.
- Page 3, ¶ 2 The report should define the term "underrepresentation."
- Page 4 The report should add the Age Discrimination in Employment Act and the Equal Pay Act as statutes that EEOC enforces.
- Page 19 Table 2 does not adequately describe the Model EEO Program as set forth in EEOC's Management Directive 715.

Appendix III: GAO Contacts and Staff Acknowledgments

GAO Contacts

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