



EXECUTIVE SUMMARY FOR:

A REVIEW OF OFCCP ENFORCEMENT STATISTICS FOR FISCAL YEAR 2008

David Cohen, M.S., Sr. Vice President

Eric M. Dunleavy, Ph.D., Senior Consultant

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The Center for Corporate Equality (CCE)

1920 I St NW, Suite 400

Washington, DC 20006

Harold M. Busch

Executive Director

Email: Harold.busch@cceq.org

Phone: 202-280-2174

www.cceq.org

“Executive departments and agencies should harness new technologies to put information about their operations and decisions online and readily available to the public. Executive departments and agencies should also solicit public feedback to identify information of greatest use to the public.”¹ Barack Obama, January 21, 2009

Introduction: This report is the second² in a series that will annually summarize OFCCP enforcement statistics. The in-depth results of this analysis provide useful information about OFCCP’s enforcement programs that the agency does not make publicly available. This report will also provide federal contractors subject to OFCCP review with important information that will facilitate their compliance with the agency’s EEO and affirmative action requirements. We continue to urge the OFCCP to conduct comparable analyses of its enforcement results in the future and make these data available to the public.

Background: In recent years, the OFCCP has announced “record breaking” results of its enforcement efforts to ensure employers doing business with the federal government comply with the equal employment opportunity (EEO) and affirmative action provisions of their contracts. For fiscal years 2005 through 2008,³ OFCCP reported that it had conducted nearly 16,000 compliance evaluations of federal contractors’ affirmative action programs and collected about \$215.8 million in financial remedies for approximately 76,800 workers through voluntary settlements and litigation.

Despite these impressive statistics, however, OFCCP has publicly disclosed very few details about what kinds of discriminatory practices they found during their compliance evaluations of federal contractors and what kinds of employees and/or applicants were impacted by them. As a result, the public does not have access to important information it needs to fully evaluate how the OFCCP enforces its equal employment and affirmative action programs. Moreover, federal contractors do not have access to important information about these settlements that would help them improve their own EEO and affirmative action compliance programs.

To address this need, CCE decided to take its own close look at the underlying information that OFCCP uses to develop its enforcement reports and to share the results with stakeholders. To our knowledge, this is the only publicly released series that includes in-depth analysis of OFCCP’s enforcement results.

¹ “Transparency and Open Government,” Memorandum for the Heads of Executive Departments and Agencies, President Barack Obama, January 21, 2009. ([74 Federal Register 4685-4686, January 26, 2009](#)).

² The first annual report that reviewed FY 2007 enforcement is entitled ‘*A Review of OFCCP Enforcement Statistics: A Call for Transparency in OFCCP Reporting*’, and is publically available at http://ceeq.org/ts_pub.asp

³ Note that, at the time this report was written, OFCCP had not released results of FY 2009 enforcement.

What Data are Missing from OFCCP's Reporting and Why is it Important? Several important details are missing from OFCCP's annual enforcement reports that are important for stakeholders to understand. For example:

- From what types of industries did financial remedies come?
- How were financial remedies calculated?
- Did covered individuals hold lower or higher level jobs?
- On what basis did contractors discriminate against covered individuals and what types of personnel practices were involved?
- How long does it take OFCCP to resolve a compliance evaluation that results in a settlement with financial remedies – one year, two years, or even longer?
- Does OFCCP enforce its programs uniformly across its various regional offices?
- Does OFCCP enforce its programs uniformly over time?
- Additionally, given the public outcry over the gender wage gap and OFCCP's systemic compensation discrimination guidelines (2006), it would be useful to know whether, in fact, OFCCP uncovered systemic compensation discrimination against women in their pay, to what extent, and what personnel practices led to pay discrimination.
- What technical violations accompanied allegations of systemic discrimination?

It is important to note that, without detailed enforcement data on OFCCP policies and procedures, the public is unable to fully understand how the OFCCP carries out its mission and what impact their operations have on various constituencies. Even the U.S. Government Accountability Office (GAO), which conducted a review of OFCCP's compensation discrimination enforcement in 2008,⁴ concluded there was insufficient recordkeeping at the agency.

Analysis and Conclusions from OFCCP FY 2008 Settlements: Similar to the 2007 report, CCE obtained settlements from OFCCP's regional offices for fiscal year 2008 via a Freedom of Information Act (FOIA) request.⁵ This year, CCE only requested settlements that included financial remedies related to allegations of systemic discrimination. In most cases these settlements also included a variety of technical violations. In total, CCE analyzed 70 conciliation agreements and three consent decrees from FY 2008 that resulted in financial remedies. Here is a summary of the key findings:

1. The number of OFCCP settlements increased from 61 in FY 2007 to 73 in FY 2008.

⁴ "Federal Agencies Should Better Monitor Their Performance in Enforcing Anti-Discrimination Laws," Report to Congressional Requesters, GAO-08-799, U.S. Government Accountability Office, August 2008, <http://www.gao.gov/new.items/d08799.pdf>.

⁵ Note that no federal contractor names are listed in this report. Federal contractor identities were treated as confidential.

2. Once again, nearly all of the settlements (over 95%) involved allegations of systemic discrimination in hiring. About 5% of the settlements focused on employee placement, and one settlement focused on promotion policies. No settlement involved allegations of systemic compensation discrimination or discrimination in termination decisions.
3. No “Glass Ceiling” Corporate Management Compliance Evaluations (CMCE)--audits of a corporate headquarters that focuses on identifying barriers to women and minorities advancing to senior executive positions--resulted in findings of systemic discrimination.
4. The majority of settlements involved alleged systemic discrimination against applicants for lower level laborer and operative jobs in food service and manufacturing industries.
5. The typical length of time between the start of the compliance evaluation and the signing of a conciliation agreement or consent decree was about two and a half years.
6. Females and minorities benefited in fairly equal numbers in these settlements
7. Veteran applicants were alleged victims of discrimination in one settlement because zero veterans were hired.
8. About one quarter of settlements focused on a ‘Total Minority’ aggregate as the covered group, while a handful of settlements focused on ‘Non-Hispanics’ as the covered group.
9. There were no settlements from compliance evaluations of a Functional Affirmative Action Plan (FAAP), which is a plan based on functional or business units rather than physical establishment.
10. Statistical significance testing was used as stand-alone evidence of disparities in over 93% of settlements. The 4/5ths percent rule was used in two settlements.
11. Enforcement strategies, such as the length of time to conciliation, how data were analyzed, how financial remedies were calculated, etc., varied between the six OFCCP Regional Offices that conducted the compliance evaluations.
12. Some interesting trends were identified when comparing OFCCP enforcement across Fiscal Years 2007 and 2008.

Recommendation: CCE again recommends that OFCCP conduct comparable analyses of its enforcement results in the future and make these data available to the public. Such analyses will provide much needed information to the public about OFCCP’s operations and decisions. We recognize the public has diverse interests and perspectives about how the agency should enforce its equal employment opportunity and affirmative action requirements mission. Transparency in OFCCP’s enforcement reporting is one area where all stakeholders should find common ground. We call upon the OFCCP to become transparent in the reporting of its enforcement results.