

**Testimony of Fatima Goss Graves
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**House Committee on Education and the Workforce
Subcommittee on Workforce Protections**

Hearing on H.R. 3633: "Protecting Health Care Providers from Increased Administrative Burdens Act" March 13, 2014

Chairman Walberg, Ranking Member Courtney, and members of the Subcommittee:

Thank you for the opportunity to testify before the Subcommittee on the important topic of the civil rights obligations of federal contractors and subcontractors. Over the last 40 years, the National Women's Law Center has been involved in virtually every major effort to secure and defend women's legal rights to equal opportunity in the workplace. I am pleased to continue that work today by speaking about the key role that civil rights enforcement plays in ensuring equal opportunity for American workers, and a stronger, more diverse federal contractor workforce.

1) Background on the Office of Federal Contract Compliance Programs.

For nearly fifty years, the federal government has operated with the longstanding principle that companies that have the privilege of profiting from doing business with the federal government should not be permitted to discriminate in employment. This is for good reason – the taxpayer dollars used to buy goods and services from companies simply should not support discrimination. And the many federal contractors that play by the rules should not have to compete at a disadvantage with those that discriminate. The important work done by the Office of Federal Contracts Compliance Programs (OFCCP) in enforcing these nondiscrimination obligations helps employers tap into a diverse pool of talent that will leave them and the broader economy stronger.

OFCCP administers and enforces the civil rights of all those employed by federal contractors and subcontractors, covering approximately one-fourth of the civilian workforce, and more than 200,000 businesses with contracts totaling almost \$700 billion. Its authority includes Executive Order 11246, which prohibits government contractors from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin, and also requires contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of employment. In addition to the Executive Order, OFCCP's jurisdiction extends to enforcement of Section 503 of the Rehabilitation Act, which requires nondiscrimination and affirmative action for qualified individuals with disabilities, and the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA), which requires nondiscrimination and affirmative action for special

and disabled veterans of any war, campaign, or expedition in which a campaign badge has been authorized.

One of the distinguishing features of OFCCP enforcement is its in-depth compliance reviews. OFCCP is not limited to merely responding to complaints – it proactively addresses discrimination by bringing systemic investigations, conducting compliance reviews of selected contractors, and providing guidance to contractors on affirmatively promoting equal opportunity in the workplace and complying with the laws under its jurisdiction. By focusing on large, systemic problems, OFCCP has ensured that workers receive fair treatment in hiring and promotions and that the employment decisions made by contractors reflect our society's nondiscrimination norms.

OFCCP's affirmative action measures require that federal contractors that have the privilege of doing business with the federal government take notice of race and gender in the course of formulating policies designed to foster equal opportunity. Put simply, these measures require that contractors 1) not discriminate, 2) take affirmative steps to ensure a diverse workplace, and 3) document these steps. These provisions essentially require self-analysis, recordkeeping, and reporting.

The steps required to comply with an OFCCP audit are directly related to increasing employment opportunities and ensuring nondiscrimination. By requiring that contractors take appropriate steps to document employment practices, OFCCP is able to affirmatively assess whether there are indicators of discrimination. In turn, through the process of record-keeping, data collection and analysis, an employer can engage in a self-evaluation that may prompt it to correct unfair practices. At the very least, both OFCCP and federal contractors will have the data that they need to track progress in providing equal employment opportunities.

Moreover, few contractors are ever subject to an OFCCP affirmative compliance review. Only about 4,000 compliance reviews are conducted each year. This means that contractors have about a 2 percent chance of being reviewed – an extremely small percentage when contrasted with 700 billion spent in federal contract dollars.

2) Civil rights enforcement is especially important during difficult economic times.

The most recent data on women and families economic stability shows that, although the economy continued its slow recovery in 2012, poverty rates for most groups were statistically indistinguishable from 2011, leaving poverty among women and children at or near historically high levels. Poverty rates for women were once again higher than for men, and were especially high for women of color, women who head families, foreign-born women, and women 65 and older living alone. The gender wage gap was unchanged for the year and the decade, undermining women's ability to support themselves and their families. And income inequality remained stark.

These statistics highlight what's at stake for workers seeking to obtain employment in this lopsided recovery. Although women are typically paid less than men in the same occupation, occupational segregation – the fact that the work women do is undervalued because it is

women's work – also contributes to women's economic insecurity. Fields like construction and manufacturing that are nontraditional for women and minorities typically offer higher pay, higher benefits, and more opportunities for advancement than do traditionally female fields. Indeed, in the construction workforce, earnings can be 30 percent higher than in occupations traditionally held by women,¹ yet women make up only 2.6 percent of construction workers.² And women of color hold only a tiny percentage of the jobs in these fields, comprising less than one percent of each workforce. Detecting and eliminating discriminatory barriers to employment – especially in high-wage fields – is therefore essential for women and their families.

Moreover, unequal access to high-paying jobs is compounded by broader pay disparities between male and female workers. Although the wage gap has narrowed since 1964, when women working full-time earned approximately 59 cents for every dollar earned by men,³ the gap persists and has remained stagnant over the last decade. According to the most recent data available from the U.S. Census Bureau, the typical woman working full-time made only 77 percent of male full-time workers' earnings.⁴ The wage gap is even larger for many women of color, who make only 64 cents (African American women) and 54 (Hispanic women) cents on the dollar when compared to white, non-Hispanic men.⁵ Moreover, unequal pay harms women and their families even after women leave the jobs that pay them less, as the persistence of the wage gap results in women's loss of retirement income and lower savings.

3) Civil Rights Enforcement Ensures Better Opportunities for Women and Minorities, Which in Turn Increases the Effectiveness of American Businesses.

The federal government's historic and current role in addressing discrimination has improved opportunities for a wide range of workers. Into the 1960s, “[w]hole industries and categories of employment were, in effect, all-white, all-male.”⁶ Studies that assessed the effect of Executive Order 11246 indicate that the makeup of the federal contractor workforce changed significantly in the years following the Executive Order.⁷ One study of over 77,000 federal contractors found that female employment by federal contractors increased by 15.2 percent between 1974 and 1980, while it rose by only 2.2 percent in non-federal contract settings.⁸ Another study of 86,000 federal contractors found that both minority and female employment increased significantly faster in contractor than in noncontractor establishments in those same six years: 12 percent faster for black females, 4 percent faster for black males, and 8 percent faster for other minority males.⁹

Throughout the years, OFCCP has implemented a number of initiatives that have aided in the integration of the workforce in industries such as construction, higher education, and mining, ensuring equal opportunity for women in sectors with a long history of unfair treatment in hiring, promotions, and compensation. For example, in 1975, pursuant to a legal settlement reached with the National Women's Law Center, OFCCP targeted hiring and employment practices for women in colleges and universities around the country, improving opportunities for women in higher education.¹⁰

Measures like these have strengthened American businesses considerably and made them more effective. A body of social science research has shown that diverse workforces perform better than more homogenous workforces on a variety of measures, such as enhanced innovation, team

productivity, and quality decisionmaking.¹¹ Teams that bring together employees with a diverse range of perspectives and expertise improve business productivity on a range of measures. These teams are “more innovative, can develop clearer strategies, can respond more aggressively to competitive threats, and can be quicker to implement certain types of organizational change than functionally homogeneous teams.”¹² As the racial and ethnic makeup of the United States changes rapidly and American businesses extend into ever-diversifying global markets, major American corporations have expressed broad consensus about the importance of a workforce exposed to a diverse environment.¹³

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The key role that OFCCP has played in improving economic security for workers and their families cannot be overstated. It is the key agency in ensuring that federal dollars are not wasted on discrimination and that companies that have the great privilege of doing business with the federal government do not discriminate and take steps to achieve a diverse workforce. This process in turn has expanded opportunities for workers over time, has made federal contracting more efficient, and has strengthened businesses.

¹ NWLC calculations from Bureau of Labor Statistics, Current Population Survey, 2011 Annual Averages, Table 39. Median weekly earnings of full-time wage and salary workers by detailed occupation and sex, available at <http://www.bls.gov/cps/cpsaat39.pdf>.

² Bureau of Labor Statistics, Current Population Survey, 2013 Annual Averages, Table 11. Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity, available at <http://www.bls.gov/cps/cpsaat11.pdf>

³ NWLC calculations from U.S. Census Bureau, Census Bureau CPS Data (ASEC), Historical Tbl. P-38: Full-Time, Year-Round Workers by Median Earnings and Sex in 1964, available at <http://www.census.gov/hhes/www/income/data/historical/people/index.html> (last visited Oct. 4, 2011).

⁴ National Women’s Law Center (NWLC) calculations from U.S. Census Bureau, Current Population Survey, 2013 Annual Social and Economic Supplement, Table PINC-05: Work Experience in 2012 – People 15 Years Old and Over by Total Money Earnings in 2012, Age, Race, Hispanic Origin, and Sex, *available at* http://www.census.gov/hhes/www/cpstables/032013/perinc/pinc05_000.htm (last visited Oct. 18, 2013).

⁵ *Id.*

⁶ George Stephanopoulos & Christopher Edley, Jr., *Affirmative Action Review* (1995), *available at* <http://clinton4.nara.gov/WH/EOP/OP/html/aa/aa-lett.html>; *see generally*

Desmond King, *Separate and Unequal: Black Americans and the U.S. Federal Government* (1995).

⁷ *See* Jonathan S. Leonard, *The Impact of Affirmative Action on Employment*, 2 J. of Labor Econ. 439 (1984) [hereinafter Leonard]; Sacha E. de Lange, *Toward Gender Equality: Affirmative Action, Comparable Worth, and the Women’s Movement*, 31 N.Y.U. Rev. L. & Soc. Change 315, 328 (2007) (citing Citizens’ Commission on Civil Rights, *Affirmative Action to Open the Doors of Job Opportunity: A Policy of Fairness and Compassion That Has Worked* 123-24 (1984)) [hereinafter Citizen’s Commission].

⁸ *See generally*, Leonard.

⁹ *See generally*, Citizen’s Commission.

¹⁰ *WEAL v. Weinberger*, Civ. No. 74-1720 (D.D.C., filed Nov. 26, 1974), subsequently *WEAL v. Califano*.

¹¹ See, e.g. Cedric Herring, *Does Diversity Pay?: Race, Gender, and the Business Case for Diversity*, 74 Am. Sociological Rev. 208, 219 (2009).

¹² J. Stuart Bunderson & Kathleen M. Sutcliffe, *Comparing Alternative Conceptualizations of Functional Diversity in Management Teams: Process and Performance Effects*, 45 Acad. Mgmt. J. 875, 875 (2002).

¹³ *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) (“These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.”).