

**Testimony of Fatima Goss Graves
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**House Committee on Education and the Workforce
Subcommittee on Health, Employment, Labor and Pensions**

**"Reviewing the Impact of the Office of Federal Contract Compliance Programs'
Regulatory Enforcement Actions"**

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Chairman Roe, Ranking Member Andrews, thank you for this opportunity to testify on behalf of the National Women's Law Center. For the last forty years, the Center has been involved in virtually every major effort to secure and defend women's legal rights, including their critical rights to equal opportunity in the workplace. And I am pleased to continue that work by speaking today about the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), an office of great importance to workers and to women in particular.

OFCCP administers and enforces the civil rights of all those employed by federal contractors and subcontractors, covering approximately one-fourth of the civilian workforce. Its authority includes Executive Order 11246, which prohibits discrimination and also requires federal contractors and subcontractors to take affirmative action to ensure that individuals, without regard to race, national origin, gender, and religion, have an equal opportunity for 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, or 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. Although my testimony today will focus primarily on OFCCP's important work in administering and enforcing the Executive Order 11246 ban on sex discrimination, and I will touch briefly on its recent regulatory work on Section 503 and VEVRAA, I must note that OFCCP's historic and current role in addressing discrimination based on race, national origin, and religion has improved opportunities for a wide range of workers and it would be impossible for one witness in a short statement to detail it all.

The key role that OFCCP has played in improving economic security for workers and their families cannot be overstated. OFFCP 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. And 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.¹ 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.

I. Civil Rights Enforcement Is Especially Important During Difficult Economic Times.

The deep recession that began in December 2007 cost workers nearly 7.5 million jobs before it officially ended in June 2009.² Although between June 2009 and March 2012 the economy added over 2.3 million net jobs,³ many groups of workers are just beginning to experience the recovery. Women overall have been slow to benefit from the official economic recovery and in fact continued to lose jobs throughout much of it. Indeed, March 2012 marked the first month that women's unemployment rate finally dropped below the 7.6 percent unemployment rate they held at the start of the recovery in June 2009, and women have regained only 13.4 percent of the jobs they lost during the recession.⁴ By contrast, men have regained 38.0 percent of the jobs they lost during the recession.⁵ Moreover, the unemployment rate for some groups of women has worsened – for example, between June 2009 and March 2012, unemployment rates *increased* for adult black women, from 11.6 percent to 12.3 percent.⁶

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,⁷ yet women make up only 2.6 percent of construction workers. They also are only 3.2 percent of those employed in maintenance and repair jobs and 13.6 percent of architecture and engineer workers.⁸ 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,⁹ the gap persists and has remained largely stagnant over the last decade. In fact, it is worth noting that yesterday was Equal Pay Day, the day in which women’s wages finally catch up to the wages of men from the prior year. 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.¹⁰ The wage gap is even larger for many women of color, with African-American women making only 62 cents, and Hispanic women only 54 cents, for every dollar earned by white, non-Hispanic men.¹¹ These gaps translate into a loss of \$19,575 for African-American women and \$23,873 for Hispanic women every year. 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.

These significant pay disparities cannot simply be attributed to the effect of choices made by women in work or family or legitimate factors that influence an individual’s pay.¹² In fact, authoritative studies show that even when all relevant career and family attributes are taken into account, there is still a significant, unexplained gap in men’s and women’s earnings. Thus, even when women make the same career choices as men and work the same hours, they still earn less. For example, a study of college graduates one year after graduation determined that women earned only 95 percent of what men earned, even after accounting for variables such as “job and workplace, employment experience and continuity, education and training, and demographic and personal characteristics.”¹³ And a study by the U.S. General Accounting Office found that, even after accounting for all relevant career and family attributes for which measures were available, there was still a significant unexplained gap in men’s and women’s earnings that can be attributed to discrimination.¹⁴

II. OFCCP Has Prioritized Areas for Enforcement that Will Enhance Women’s Economic Security.

The recession and ongoing recovery underscore the need for robust protections against unlawful employment practices, and OFCCP has a tremendous responsibility and opportunity to help address these barriers to workplace equality for women. Its regulatory agenda along with reinvigorated enforcement of Executive Order 11246 demonstrate that it understands the urgency of equal employment opportunities for women and their families. *To begin with*, OFCCP has prioritized enforcement against pay discrimination, which as I detailed above has a serious impact on the economic security of millions of women and their families. OFCCP's emphasis on pay discrimination is especially important given the difficulties workers face in identifying wage disparities. Nearly half of all workers nationally are either contractually forbidden or strongly discouraged from discussing their pay with their colleagues.¹⁵ And workers can be paid unfair wages for years prior to discovering pay disparities, if they discover them at all. Even if they do discover disparities, workers may feel powerless to address them because they fear retaliation from their employers.

OFCCP is well-positioned to detect and combat pay discrimination in its enforcement of the Executive Order, and the agency's enforcement efforts and regulatory agenda are designed to make meaningful improvements in the wage gap. A recent victory by OFCCP, for example, illustrates this point. After a scheduled compliance review with Astra Zeneca, a pharmaceutical company with a \$2 billion contract with the U.S. Department of Veteran's Affairs, OFCCP found gender-based pay disparities. Astra Zeneca agreed to pay \$250,000 to 124 current and former female employees who were paid an average of \$1,700 less than their male counterparts. In addition to the immediate payments, Astra Zeneca agreed to work with OFCCP to analyze the salaries of 415 additional employees in several states. It will also develop and annually update its affirmative action policies.

Second, OFCCP has identified key areas for regulatory improvement in the area of pay discrimination, identifying measures that would enhance its enforcement capabilities, allowing it to conduct more accurate and strategic reviews of contractor compensation practices. For example, it has proposed a rescission of two guidance documents developed in 2006 that undermined OFCCP's ability to address pay discrimination: the Interpretive Standards for Systemic Compensation Discrimination¹⁶ and the Voluntary Guidelines for Self-Evaluation of Compensation Practices under Executive Order 11246.¹⁷ The guidance documents limited the ability of OFCCP to use the full range of investigatory tools that may be appropriate in compensation cases, hampering the ability of OFCCP to identify cases of compensation discrimination consistent with Title VII and Executive Order 11246. They further encouraged government contractors to avoid OFCCP scrutiny of their self-evaluation procedures by using the same potentially-flawed statistical methods for compensation cases. These policy changes worked together to significantly limit

OFCCP's ability to gather wage data and detect and address wage discrimination. A change in the standards would both significantly aid OFCCP in identifying compensation discrimination among federal contractors and subcontractors and assist federal contractors in their self-audits.

In addition, last fall OFCCP took the initial steps towards implementing an instrument specific to compensation data. Since 2006, private employers have not been required to systematically report gender-identified wage data to the federal government. In an Advance Notice of Proposed Rulemaking, OFCCP sought the input of stakeholders on approaches for collecting wage data and ways to limit the burden of data collection for employers.

This policy stands to improve worker protections while taking the interests of businesses into account. In fact, a compensation tool could ultimately both reduce the existing administrative burden on law-abiding employers and OFCCP by providing a stronger predictive method to highlight within the agency's evaluation system those employers most likely engaged in compensation discrimination. Law-abiding employers would be less likely to be subjected to in-depth review of their compensation and other hiring practices because analyses made possible by the data collection tool would suggest that such employers have a low probability of non-compliance with the nondiscrimination mandate of Executive Order 11246. The process of responding to the data collection tool may raise important issues for employers, spurring them to analyze their pay and related practices. We look forward to the completion of the rulemaking process – a tool for collecting compensation data would enable OFCCP to more effectively identify pay disparities among federal contractors and identify those whose compensation practices warrant closer inspection.

Third, we are pleased that OFCCP enforcement has included prohibiting hiring discrimination by federal contractors and subcontractors in nontraditional jobs for women. The recent settlement with Tyson Fresh Meats, a Tyson Foods, Inc. subsidiary, to remedy discrimination against female applicants is a noteworthy example. Tyson Foods has significant contracts with the U.S. military and other government entities totaling more than \$200 million in each of the last three years. It agreed to pay \$2.25 million in back wages, interest and benefits to more than 1,650 women who, despite being qualified applicants, were rejected for positions at Tyson plants. The terms of the settlement also required that Tyson hire 220 of the affected women as positions become available. Finally, Tyson was required to review and correct employment policies to prevent the same practices from occurring in the future.

Fourth, while OFCCP's compensation-related regulatory agenda could make a real impact on the wage gap and is therefore a priority for the National Women's Law

Center, we also look forward to OFCCP's work to update the construction contractor affirmative action requirements identified in its regulatory agenda. In 1978, Executive Order 11246 was amended to set a goal for women to work 6.9 percent of federal construction contractors' work hours. After over 30 years, we believe strongly that it is time for OFCCP to revisit these requirements as they do not take into account that women's participation in the civil labor force as a whole and in many formerly male-dominated occupations specifically has increased.

III. OFCCP Section 503 and VEVRAA Regulatory Agenda

Veterans and individuals with disabilities have experienced extraordinary rates of unemployment during both the recession and economic recovery. The unemployment rate for Gulf War II-era veterans was 10.3% in March 2012 while the unemployment rate for the general population at the same time was 8.2%.¹⁸ And the unemployment rate for individuals with disabilities is almost twice that of those who are not disabled – in March 2012, the unemployment rate for individuals without disabilities was 15.2%, while the unemployment rate for individuals without disabilities was 8.1% in March 2012.¹⁹

In the face of these incredibly high rates of unemployment for veterans and individuals with disabilities, OFCCP has proposed requirements that would change the way that contractors recruit and hire veterans and individuals with disabilities:

Section 503. Contractors' Section 503 requirements have been unchanged since the 1970s, and yet the unemployment rate of working-age individuals with disabilities and the percentage of working age individuals with disabilities who are not in the workforce remain much higher than for individuals without disabilities.²⁰ Like in the area of pay discrimination, OFCCP has taken steps to strengthen the Section 503 regulations to help ensure equal opportunity for those with disabilities in federal contractor workplaces. On December 9, 2011, OFCCP issued a notice of proposed rulemaking to inform the public about proposed changes to its regulations under Section 503. The changes included revising the nondiscrimination provisions to incorporate the legal changes made by the ADA Amendments Act of 2008 and strengthening the affirmative action provisions by detailing actions contractors must take in recruiting, training, recordkeeping, and disseminating their affirmative action policies. Contractors also would be required to measure the effectiveness of their affirmative action efforts through a national utilization goal of 7% for the employment of individuals with disabilities in each job group of the contractor's workforce.²¹

VEVRAA. Veterans returning from service face significant obstacles in obtaining employment, including explaining their military experience to civilian employers²² and the stigma associated with psychological injuries and mental health treatment.²³ Yet the framework of contractor obligations regarding VEVRAA has not

been revised since the initial regulations were published in 1976²⁴ and thus do not reflect the employment situation that returning veterans now face. Among other things, the regulations would prompt contractors to evaluate annually the effectiveness of their efforts to ensure that protected veterans have access to employment opportunities, including by setting measurable benchmarks for hiring veterans.

These OFCCP proposals shine a light on the obstacles that veterans and individuals with disabilities face in securing employment and continue in the long OFCCP tradition of ensuring that workers have equal access to employment and that workplaces that are equitable.

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For nearly fifty years, the federal government has operated from 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. For good reason – the taxpayer dollars used to buy goods and services from companies simply should not support discrimination. But OFCCP’s role in administering and enforcing the ban on discrimination in federal contracting is especially important in these times when no worker – indeed no family – can afford to have their employment opportunities limited or their wages arbitrarily lowered by discrimination.

¹ *WEAL v. Weinberger*, Civ. No. 74-1720 (D.D.C., filed Nov. 26, 1974), subsequently *WEAL v. Califano*.

² NWLC calculations from U.S. Dep’t of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Employment Statistics Survey, Table B-5: Employment of women on nonfarm payrolls by industry sector, seasonally adjusted, available at <http://bls.gov/ces/cesbtabs.htm> (last visited Apr. 6, 2012).

³ NWLC calculations from U.S. Dep’t of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Employment Statistics Survey, Table B-5: Employment of women on nonfarm payrolls by industry sector, seasonally adjusted, available at <http://bls.gov/ces/cesbtabs.htm> (last visited Apr. 6, 2012).

⁴ NWLC calculations from U.S. Dep’t of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey (hereinafter “BLS Current Population Survey”), Table A-1: Employment status of the civilian population by sex and age, seasonally adjusted, available at <http://www.bls.gov/news.release/empsit.nr0.htm> (last visited Apr. 6, 2012). All adult unemployment rates are for individuals 20 and older.

⁵ NWLC calculations from U.S. Dep’t of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Employment Statistics Survey, Table B-5: Employment of women on nonfarm payrolls by industry sector, seasonally adjusted, available at <http://bls.gov/ces/cesbtabs.htm> (last visited Apr. 6, 2012).

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- ⁶ NWLC calculations from BLS Current Population Survey, Table A-2: Employment status of the civilian population by race, sex and age, seasonally adjusted, available at <http://www.bls.gov/news.release/empsit.nr0.htm> (last visited Apr. 6, 2012).
- ⁷ 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>.
- ⁸ Bureau of Labor Statistics, Current Population Survey, 2011 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>
- ⁹ 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).
- ¹⁰ NATIONAL WOMEN'S LAW CENTER, POVERTY AMONG WOMEN AND FAMILIES, 2000-2010: EXTREME POVERTY REACHES RECORD LEVELS AS CONGRESS FACES DIFFICULT CHOICES 10 (September 2011), available at <http://www.nwlc.org/sites/default/files/povertyamongwomenandfamilies2010final.pdf>.
- ¹¹ NWLC calculations from U.S. Census Bureau, Current Population Survey, 2011 Annual Social and Economic Supplement, Table PINC-05: Work Experience in 2010 – People 15 Years Old and Over by Total Money Earnings in 2010, Age, Race, Hispanic Origin, and Sex, available at <http://www.census.gov/hhes/www/cpstables/032011/perinc/toc.htm> (last visited Sept. 27, 2011).
- ¹² See, e.g., Cheryl Travis, et al., *Tracking the Gender Pay Gap: A Case Study*, 33 PSYCHOL. WOMEN Q. 410, 410-11 (2009) (citing studies).
- ¹³ See AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, BEHIND THE PAY GAP 17, 18 (2007), available at <http://www.aauw.org/learn/research/behindPayGap.cfm>.
- ¹⁴ See U.S. GENERAL ACCOUNTING OFFICE, WOMEN'S EARNINGS: WORK PATTERNS PARTIALLY EXPLAIN DIFFERENCE BETWEEN MEN'S AND WOMEN'S EARNINGS (2003), available at <http://www.gao.gov/new.items/d0435.pdf>.
- ¹⁵ Institute for Women's Policy Research (IWPR), Fact Sheet: Pay Secrecy and Wage Discrimination (June 2011), available at <http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination>.
- ¹⁶ Office of Federal Contract Compliance Programs; Interpreting Nondiscrimination Requirements of Executive Order 11246 With Respect to Systemic Compensation Discrimination; Notice, 71 Fed.Reg. 35,124 (June 16, 2006) (hereinafter "Standards").
- ¹⁷ Office of Federal Contract Compliance Program; Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance With nondiscrimination Requirements of Executive Order 11246 With Respect to Systemic Compensation Discrimination; Notice, 71 Fed. Reg. 35,114 (June 16, 2006) (hereinafter "Voluntary Guidelines").
- ¹⁸ Bureau of Labor Statistics, Table A-5. Employment status of the civilian population 18 years and over by veteran status, period of service, and sex, not seasonally adjusted (Apr. 2012), available at <http://www.bls.gov/news.release/empsit.t05.htm>
- ¹⁹ Bureau of Labor Statistics, Table A-6. Employment status of the civilian population by sex, age, and disability status, not seasonally adjusted (Apr. 2012), available at <http://www.bls.gov/news.release/empsit.t06.htm>.
- ²⁰ Office For Federal Contract Compliance Programs, Section 503 of the Rehabilitation Act Notice of Proposed Rulemaking (NPRM), available at <http://www.dol.gov/ofccp/regs/compliance/faqs/Section503 NPRM faq.htm> (last visited Apr. 13, 2012).
- ²¹ See Office of Federal Contract Compliance Programs, Frequently Asked Questions, Section 503 of the Rehabilitation Act Notice of Proposed Rulemaking (NPRM), at

http://www.dol.gov/ofccp/regs/compliance/faqs/Section503_NPRM_faq.htm#Q9. Other proposed measures include requiring contractors to invite individuals with a disability to voluntarily self-identify at the pre-offer and post-offer stages, requiring that contractors conduct regular anonymous surveys of their employees to provide employees another opportunity to self-identify, and providing for electronic posting of employee rights and contractor obligations. *See id.*

²² Vanessa Williamson & Erin Mulhall, Iraq and Afghanistan Veterans of America, *Careers After Combat: Employment and Education Challenges for Iraq and Afghanistan Veterans 2* (Jan. 2009), available at http://iava.org/files/iava_careers_after_combat_2009.pdf (noting one recent survey found that 61% of employers did not believe they had “a complete understanding of the qualifications ex-service members offer” and more than 75% of veterans entering the workforce reported “an inability to effectively translate their military skills to civilian terms”).

²³ *See id.* (noting nearly one-third of veterans who tested positive for mental health problems worried about the effect it will have on their career).

²⁴ Office for Federal Contract Compliance Programs, Vietnam Era Veterans’ Readjustment Assistance Act (Section 4212) Notice of Proposed Rulemaking (NPRM), *available at* http://www.dol.gov/ofccp/regs/compliance/faqs/VEVRAA_NPRM_faq.htm#Q3 (last visited Apr. 13, 2012).