

GAO Highlights

Highlights of [GAO-19-719T](#), a testimony before the Subcommittee on Civil Rights and Human Services, Committee on Education and Labor, House of Representatives

Why GAO Did This Study

Several federal laws, executive orders, and regulations seek to promote equal employment opportunity by prohibiting employers from discriminating in employment on the basis of race and gender, among other things, and generally require companies contracting with the federal government to comply with affirmative action and other equal employment opportunity provisions. The EEOC and OFCCP are the primary federal agencies that enforce these requirements. Although federal law also generally prohibits employment discrimination based on religion, faith-based organizations may hire based on religion. Some federal grant programs contain statutory restrictions prohibiting this practice; however, since a 2007 DOJ legal opinion, federal agencies have allowed faith-based grantees to use RFRA as a basis for seeking an exemption to allow religious-based hiring.

GAO has issued three reports since September 2016 that address equal employment opportunity (GAO-16-750, GAO-18-69, and GAO-18-164). This testimony is based on these three reports and discusses 1) OFCCP and EEOC's progress in addressing prior GAO recommendations and 2) equal employment opportunity exemptions for faith-based organizations.

To update the status of prior recommendations, GAO reviewed agency guidance and documentation and interviewed agency officials.

View [GAO-19-719T](#). For more information, contact Cindy Brown Barnes at (202) 512-7215 or brownbarnesc@gao.gov.

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EQUAL EMPLOYMENT OPPORTUNITY

Progress Made on GAO Recommendations to Improve Nondiscrimination Oversight, but Challenges Remain

What GAO Found

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) face challenges in overseeing compliance by employers and federal contractors with applicable federal equal employment opportunity requirements. In its 2016 report, GAO made six recommendations to OFCCP and in its 2017 report made five additional recommendations to OFCCP and one to EEOC to strengthen program oversight. OFCCP has implemented four recommendations, but seven require additional agency action to be fully implemented, as does the one to EEOC. For example:

- In 2016, GAO found that OFCCP's oversight was limited by reliance on contractors' voluntary compliance with affirmative action plan requirements. OFCCP has taken steps to develop a new web portal for collecting those plans annually, but has not yet obtained Office of Management and Budget approval for the collection or launched the portal. GAO also found OFCCP's oversight was limited by a lack of timely staff training. OFCCP has taken steps to implement a new training curriculum, but has not yet implemented its new learning management system that will help ensure timely and regular training.
- In 2017, GAO found that EEOC had not consistently captured information on industry codes, which limits EEOC's ability to identify trends by industry sector and conduct sector-related analyses. EEOC has not yet completed development of its Employer Master List that will include industry codes. GAO also found that OFCCP's methodology for identifying equal employment disparities by industry might not accurately identify industries at greatest risk of noncompliance with affirmative action and nondiscrimination requirements. OFCCP has taken steps to develop a new methodology, but needs to further refine it to ensure that it will identify industries at greatest risk.

From fiscal years 2007 through 2015, few faith-based grantees sought an exemption from nondiscrimination laws related to religious-based hiring under the Religious Freedom Restoration Act of 1993. In October 2017, GAO found that the Departments of Justice (DOJ), Health and Human Services (HHS), and Labor (DOL) had awarded funding to at least 2,586 grantees through at least 53 grant programs that restricted grantees from making employment decisions based on religion. The number of relevant grant programs could be higher because GAO could not identify all such programs due to data limitations. Across the three agencies, GAO identified 117 grantees that were potentially faith-based organizations (FBO). Of the 117 potential FBOs, nine DOJ grantees were FBOs certified as being exempt from statutory restrictions on religious-based hiring. All three agencies required grantees seeking an exemption to self-certify that they were eligible for the exemption, but the agencies' processes for reviewing and approving exemption requests varied. In August 2019, OFCCP issued a proposed rule to clarify the scope and application of the religious exemption to help organizations with federal contracts and subcontracts and federally assisted construction contracts and subcontracts better understand their obligations.