

GAO

Report to the Chairwoman,
Subcommittee on Government
Activities and Transportation,
Committee on Government Operations,
House of Representatives

August 1989

EQUAL EMPLOYMENT OPPORTUNITY

Actions Needed for FAA to Implement Committee Recommendations in the Airline Industry





United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-214127

August 18, 1989

The Honorable Cardiss Collins
Chairwoman, Subcommittee on Government
Activities and Transportation
Committee on Government Operations
House of Representatives

Dear Madam Chairwoman:

This report is in response to your request¹ asking us to review the actions needed for the Department of Transportation's (DOT) Federal Aviation Administration (FAA) to assume a role in administering the federal contract compliance program in the airline industry. This program is authorized in part by Executive Order 11246, issued on September 24, 1965, which prohibits discrimination in employment and hiring by federal contractors and subcontractors and requires them to take affirmative action to provide equal employment opportunity for all employees and job applicants, regardless of race, color, religion, sex, or national origin.

The Congress later expanded the program by requiring federal contractors to provide equal employment opportunity and take affirmative action in employing (1) individuals with handicaps under the Rehabilitation Act of 1973, as amended, and (2) Vietnam era and certain disabled veterans under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. The Office of Federal Contract Compliance Programs (OFCCP) in the Department of Labor is responsible for enforcing the federal contract compliance program's requirements, including their application to federal contractors in the airline industry.

In late 1986 and early 1987, your Subcommittee held hearings on allegations of discrimination against blacks in the airline industry focusing on the employment, retention, and promotion of black pilots, managers, and other professionals. On the basis of those hearings, the Subcommittee concluded that (1) the airline industry had made slow progress on affirmative action, particularly with respect to black pilots, managers, and other professionals, and (2) OFCCP had failed to enforce adequately the federal contract compliance program's affirmative action and equal employment opportunity requirements in the airline industry.

¹Contained in House Committee on Government Operations' report Slow Progress Regarding Affirmative Action in the Airline Industry (H. Rept. 100-781, July 1988) and in later discussions with the Subcommittee staff.

transfer of enforcement responsibility to FAA would be counterproductive to the federal contract compliance program and would result in a fragmented and ineffective enforcement program as existed before centralization of the program in OFCCP in 1978.

Background

The federal contract compliance program began nearly 50 years ago in 1941; OFCCP has had responsibility for the program since Executive Order 11246 was issued in 1965. In 1978 the program's administration was consolidated in OFCCP.² In September 1985, Labor's Office of Inspector General issued a report that was critical of OFCCP's administration of the program. In late 1986 and early 1987, your Subcommittee held hearings on alleged discrimination against blacks in the airline industry and OFCCP's enforcement of the federal contract compliance program in the industry.

In a July 1988 report on the Subcommittee's study, the House Committee on Government Operations concluded that (1) the airline industry was making slow progress on affirmative action and (2) the industry needed to do more to increase the representation of blacks, particularly black pilots, managers, and other professionals. The report stated that although blacks represented nearly 30 percent of the industry's unskilled workers, they represented less than 2 percent of all airline professionals. Moreover, of an estimated total of 45,000 pilots, fewer than 200—less than 0.5 percent—were black. The report stated further that (1) OFCCP had failed to monitor effectively the airline industry's compliance with federal affirmative action laws and regulations and (2) its enforcement had come to a virtual standstill since 1980.³

The Committee report noted that FAA occupies a unique relationship with the airline industry because of the agency's depth and breadth of regulatory and supervisory functions and its institutional knowledge and understanding of the industry's problems. According to the report, (1) FAA is active in equal employment opportunity and affirmative action through its Office of Civil Rights and (2) it would be logical for

²Before 1978 contracting agencies generally administered the program for their own contracts under OFCCP's regulations. FAA administered the program in the airline industry. See appendix I for a detailed description of the program.

³The report also cited the House Committee on Education and Labor's October 1987 report that was critical of OFCCP's overall program performance. See Investigation of the Civil Rights Enforcement Activities of the Office of Federal Contract Compliance Programs, U.S. Department of Labor (H. Rept. 100-R, Oct. 1987).

federal contractor discrimination in the 1950s and 1960s. The head of each contracting agency was primarily responsible for obtaining contractors' compliance.

Two events in the latter 1960s strengthened the federal government's emphasis on civil rights and employment discrimination and on the federal contract compliance program. One was the passage of the Civil Rights Act of 1964. Title VII of this act prohibits discrimination in hiring, upgrading, and other conditions of employment on the basis of race, color, religion, sex, or national origin. The act also created the Equal Employment Opportunity Commission (EEOC) to investigate charges of discrimination against employers, labor organizations, and public and private employment agencies.

The other event was President Johnson's issuance, in September 1965, of Executive Order 11246, which prohibits discrimination in employment and hiring by federal contractors and subcontractors and requires them to take affirmative action to provide equal employment opportunities for all employees and job applicants regardless of race, color, religion, sex, or national origin. Although EEOC is the primary federal agency for investigating charges alleging employment discrimination, the President delegated to the Secretary of Labor responsibility for administering the federal contract compliance program. The Secretary in 1965 established OFCCP to administer the order. OFCCP coordinates its program with EEOC.

Under Executive Order 11246, each contracting agency was primarily responsible for obtaining compliance by its contractors with the order and Labor's requirements. In October 1969 the Secretary revised the program and designated 16 major federal procurement agencies responsible for obtaining compliance with the order's requirements and OFCCP's implementing regulations (41 C.F.R. 60). DOT, 1 of the 16 agencies, re delegated its contract compliance responsibility to FAA, which regulates the airline industry.

The Congress later extended the contract compliance program to individuals with handicaps and Vietnam era and certain disabled veterans. Section 503 of the Rehabilitation Act of 1973 prohibits federal contractors and subcontractors from discriminating against individuals with handicaps. Similarly, the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 U.S.C. 2012) prohibits federal contractors and subcontractors from discriminating against Vietnam-era veterans and

OFCCP carries out its enforcement responsibilities principally by making compliance reviews, involving on-site visits at the contractors' facilities, to determine whether the contractor maintains nondiscriminatory employment practices and is taking required affirmative action. Under its enforcement program, OFCCP reviews annual employer information reports to flag and target for review those facilities that show they had the greatest potential problems.⁵ The 56 airlines have about 345 facilities subject to OFCCP's review. During fiscal years 1982 to 1986, OFCCP made compliance reviews at 93 airline facilities, which represented 22 percent of the facilities targeted for review. According to an OFCCP official, this proportion was comparable to the reviews made at the total universe of facilities covered by OFCCP, where 24 percent of facilities targeted were reviewed. In fiscal years 1987 and 1988, OFCCP made compliance reviews at 26 and 25 airline facilities, respectively.

GAO Observations on Actions Needed to Accomplish the Committee's Recommendation

For FAA to have a role, with OFCCP, in enforcing the federal contract compliance program in the airline industry, several actions are needed: (1) the President would have to issue a new executive order, (2) the Congress would have to amend the rehabilitation and Vietnam era veterans' acts, and (3) the Congress would have to appropriate funds, or provide for the transfer of staff and resources from OFCCP, to FAA. In addition, DOT, FAA, and OFCCP would need to take several actions.

Issue New Executive Order

For FAA to have an enforcement role under Executive Order 11246, the President would have to issue a new executive order. The new order should amend Executive Order 11246 and:

- Define the specific role and responsibilities for DOT and FAA to enforce, in the airline industry, Executive Order 11246's federal contract compliance program requirements.
- Provide that OFCCP (1) retain overall responsibility for the federal contract compliance program under Executive Order 11246 and (2) monitor FAA's enforcement efforts.
- Specify that Executive Order 12086, which consolidated the federal contract compliance program in OFCCP, is to remain in effect except for the provision relating to equal employment opportunity and affirmative action in the airline industry. This should prevent the new executive

⁵See app. I for an explanation of OFCCP's system for targeting and selecting contractors' facilities for review.

FAA officials, on the other hand, were unable to provide an estimate. They stated that to make such an estimate, FAA would need such information as (1) the scope of the responsibility to be transferred to FAA; (2) the number of affected firms that have contracts of \$1 million or more that require preaward reviews and the location of the contractors' facilities; (3) the number of applicants, employees, and contractors affected by the requirements of 38 U.S.C. 2012, as amended, and section 503; (4) OFCCP's criteria for compliance reviews; and (5) staff needs for legal and other support functions.

After FAA and OFCCP complete their review to resolve the issue of FAA's staffing and funding needs:

- The Congress would have to approve new legislation or the President would have to submit, for the Congress's approval, a Reorganization Plan to appropriate and/or transfer from OFCCP to FAA the necessary funds and staff positions for FAA to carry out the new responsibilities.

Redelegate Responsibility to FAA

In October 1969, when DOT was assigned responsibility for contract compliance in the airline industry under Executive Order 11246, the Secretary of Transportation redelegated this function to FAA. If the President issued a new executive order reassigning DOT responsibility for enforcing Executive Order 11246 in the airline industry and if new legislation is passed to give DOT responsibility for handicapped persons and Vietnam era and certain disabled veterans:

- The Secretary of Transportation would have to redelegate these program responsibilities and functions to FAA in order for FAA to assume the responsibilities.

Develop Memorandum of Understanding

At present, because of overlapping jurisdictions and to prevent duplication of enforcement efforts, OFCCP and EEOC have a memorandum of understanding. Under the memorandum the two agencies coordinate compliance reviews and complaint investigations at contractors under the federal contract compliance program. If the responsibility for the program in the airline industry is transferred from OFCCP to DOT and delegated to FAA, a similar memorandum of understanding between FAA and OFCCP would likely be needed.

- The memorandum should define each agency's specific responsibilities, including OFCCP's new oversight and monitoring role.

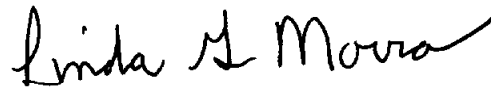
we do not believe it would be necessary for FAA and EEOC to enter into a memorandum of understanding since FAA's relationship would primarily be with OFCCP rather than with EEOC.

Labor also furnished technical comments on various segments of the report to clarify and augment facts we presented. These technical comments have been included, as appropriate, in the report. Labor's complete comments are included in appendix III.

Unless you announce its contents earlier, we plan no further distribution of this report for 30 days from its issue date. At that time we will send copies to the Secretaries of Labor and Transportation, the Administrator of FAA, the Director of OFCCP, and other interested parties, including interested congressional committees. We will also make copies available to others as requested.

Major contributors to this report are listed in appendix V.

Sincerely yours,



Linda G. Morra
Director, Select Congressional Studies

The federal contract compliance program was expanded by President Kennedy on March 6, 1961, through Executive Order 10925, which stated that there was a need to strengthen the efforts to promote full equality of employment opportunities. This order established the President's Committee on Equal Employment Opportunity, headed by the Vice President. The committee's responsibilities included making policy for overseeing and evaluating the procurement agencies' activities under the federal contract compliance program. The order also required the committee to seek the cooperation of labor unions or other representatives of workers with government contracts to comply with the order's nondiscrimination provisions.

The order also established sanctions and penalties that could be imposed for noncompliance. Sanctions included contract termination, debarment from future contracts, and various legal actions for violations of the order. The order designated the Secretary of Labor as Vice-Chairman of the committee and provided for an Executive Vice Chairman to be responsible for the committee's daily operations. An Assistant Secretary of Labor was appointed as the Executive Vice Chairman.

Two events toward the last half of the 1960s significantly increased the emphasis on the federal contract compliance program. One was the enactment of the Civil Rights Act of 1964, effective July 1965, which created the Equal Employment Opportunity Commission (EEOC). The other was President Johnson's issuance in September 1965 of Executive Order 11246, which gave the Secretary of Labor the responsibility and authority for the federal contract compliance program.

EEOC

The Civil Rights Act of 1964 is among the broad range of laws and executive orders intended to ensure that all Americans are afforded their right to an equal opportunity to pursue work of their choice. Title VII created EEOC to enforce the law's prohibition against employment discrimination on the basis of race, color, religion, sex, or national origin in the classification, selection, hiring, upgrading, benefits, layoffs, or any other condition of employment.

EEOC was also designated as the lead agency for enforcing federal equal employment opportunity laws and regulations and for coordinating such programs. Labor retained responsibility for the federal contract compliance program, but Labor is required to consult and coordinate with EEOC. Beginning in 1970 and extending through the 1980s, EEOC and Labor

Program Extended to Individuals With Handicaps and Certain Veterans

Section 503 of the Rehabilitation Act of 1973 required that contractors and subcontractors with federal contracts take affirmative action to employ and advance in employment qualified handicapped individuals.⁶ The act defined an individual with a handicap as one who has a physical or mental impairment that substantially limits one or more of his or her major life activities.

In 1974, the Congress enacted the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 2012), which requires contractors and subcontractors with federal contracts to take affirmative action to employ and advance in employment Vietnam era and special disabled veterans. The act defines a Vietnam era veteran as a person who served on active duty for more than 180 days from August 5, 1964, to May 7, 1975, and was discharged with other than a dishonorable discharge. A special disabled veteran is a person (1) entitled to disability compensation from the Veterans Administration for a 30 percent or greater disability or (2) discharged or released from active duty for a disability incurred or aggravated in the line of duty.

The Secretary of Labor delegated to OFCCP responsibility to administer the two laws' activities as part of the federal contract compliance program. OFCCP's basic mission, process, and procedures for these two activities were essentially the same as those under Executive Order 11246.

Program Consolidated in OFCCP

In March 1977, the Assistant Secretary of Labor for Employment Standards established an OFCCP task force to (1) evaluate the agency's operation of the federal contract compliance program and (2) develop recommendations to improve the program. On the basis of its findings, the task force concluded, among other things, that the program's fragmented responsibilities were an obstacle to successful program performance. The task force recommended that (1) the responsibility and authority (including budget and staff resources) of the compliance agencies be consolidated in Labor, specifically OFCCP, and (2) OFCCP become an autonomous federal contract compliance administration under the leadership of an assistant secretary with equal employment opportunity enforcement as his or her sole responsibility. The task force's findings and recommendations were presented in a September 16, 1977, report to the Secretary of Labor.

⁶The definition was later changed to "individuals with handicaps." See Public Law 99-506, enacted October 21, 1986.

OFCCP carries out its enforcement responsibilities in two ways—complaint investigations and compliance reviews. OFCCP refers individual complaints that are also covered by title VII of the Civil Rights Act of 1964 to EEOC based on the agencies' memorandum of understanding. However, if there is an allegation of systemic or class employment discrimination, OFCCP retains jurisdiction. In an attempt to resolve the dispute, OFCCP investigates such complaints by interviewing the complainant and making an on-site visit to the contractor's facility. OFCCP investigates an average of about 1,000 complaints each year.

OFCCP headquarters targets companies, including airlines, for compliance reviews by reviewing annual employer information reports submitted by covered companies. OFCCP establishes compliance review priorities by comparing the participation rates of minorities and women in each company establishment (facility) to that of others in the same geographic area and industry group. It also examines the facility's record over a 5-year period in employing minorities and women. Based on this analysis, OFCCP headquarters (1) ranks all contractor facilities in the same geographic area, (2) flags those scoring lower than others, and (3) schedules (targets) those flagged companies that appear to have the greatest potential problems for review.

Compliance reviews represent OFCCP's principal enforcement activity. In regard to airlines, OFCCP's data show that about 56 airlines are covered by its regulations and that these airlines have about 345 facilities subject to review. During fiscal years 1982 to 1986, OFCCP made compliance reviews at 93 airline facilities, which represented 22 percent of the facilities targeted for review. According to OFCCP officials, this proportion was comparable to the reviews made at the total universe of contractor facilities covered by OFCCP, where 24 percent of facilities targeted were reviewed. During fiscal years 1987 and 1988, respectively, OFCCP made compliance reviews at 26 and 25 of the airlines' facilities.

OFCCP's compliance reviews usually begin with a request that the contractor submit its affirmative action program and support data. OFCCP analyzes the information to identify potential discrimination problems, as well as the company's affirmative recruitment and training efforts. OFCCP normally follows with an on-site visit at the contractor's facility. If the investigation results in a finding of no violation, the case is closed. However, if discrimination is found, or the company's affirmative action performance has been deficient, OFCCP attempts, through conciliation and persuasion, to secure voluntary contractor compliance and agreement to remedy past discrimination.

**Appendix I
Description of the Federal Contract
Compliance Program**

FAA continued to hold these organizational and program responsibilities for the airline industry until October 1978, when OFCCP assumed centralized responsibility for the contract compliance program pursuant to Executive Order 12086. Both DOT and FAA, however, have retained their Offices of Civil Rights. FAA's office is responsible for such activities as resolving internal discrimination complaints, handling minority business development projects funded by the agency under the disadvantaged business enterprise program, and administering grants to historically black colleges and universities.

- current activities in their Offices of Civil Rights.

We also discussed with DOT and FAA officials the agencies' regulatory efforts in the airline industry and obtained their views on (1) the Committee's proposal to have FAA assume a role, with OFCCP, in the federal contract compliance program for the airline industry and (2) where such responsibility and operations would be placed in FAA's current organization, if the proposal is adopted.

To help identify the legal and administrative mechanisms under which FAA could assume an oversight role in the airline industry, we reviewed the legislative history and implementing regulations of the federal contract compliance program in general and in the airline industry in particular. This included a review of (1) Executive Order 11246, issued on September 24, 1965; (2) section 503 of the Rehabilitation Act of 1973; (3) section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974; and (4) Reorganization Plan No. 1 of 1978 and Executive Order 12086, issued October 5, 1978.

Now on p. 6.

administrative problems FAA might encounter were it to assume compliance enforcement authority again. Consequently, we recommend that the GAO report incorporate a comparative analysis of the FAA pre-consolidation experience in enforcing the contract compliance laws. In this regard, we note that the draft report mentions (at page 11) but does not discuss the substance of a 1977 task force report on the Federal contract compliance program which recommended consolidation of the program in the OFCCP. A discussion in the GAO report of the task force's findings and its rationale for recommending consolidation would ensure that information regarding the administrative problems which contributed to the need for consolidation is before the House Committee in its evaluation of a proper role for the FAA.

The draft report identifies several legal and administrative actions that must be accomplished before FAA could assume a shared role in the Federal contract compliance program, e.g. a Department of Transportation (DOT) delegation of authority to FAA and a Memorandum of Understanding between OFCCP and FAA. An additional interagency Memorandum of Understanding between the FAA and the Equal Employment Opportunity Commission, such as the one between OFCCP and the EEOC, may also be necessary depending on the nature of the "oversight" role proposed for OFCCP vis-a-vis the FAA.

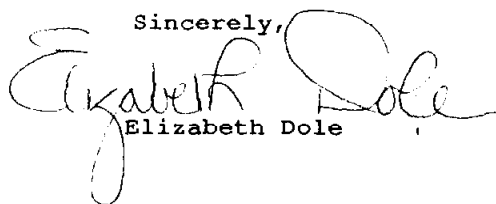
In addition to the foregoing, we would like to bring the following technical matters to your attention. The first sentence of the draft report refers generally to the Federal contract compliance program; however, the second sentence begins "[t]his program is authorized by Executive Order 11246" We suggest a clarification. OFCCP enforces three laws pertaining to Government contractors and subcontractors: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and Section 2012 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. §2012), as amended. Consequently, OFCCP's Federal contract compliance program is authorized by three laws, rather than one. We recommend that either all three laws be mentioned in the opening paragraph of the report, or that the second sentence be limited to the Executive Order program.

We recommend two clarifications to the last sentence of the first paragraph of the draft report. The sentence states "[t]he order also requires federal contractors to . . . take affirmative action to ensure that equal employment opportunity is provided to all their employees." First, the protections afforded by the Executive Order extend to job applicants as well as employees so coverage should not be described as limited to employees. In addition, as drafted the sentence is not limited to the grounds

Appendix III
Comments From the Department of Labor

and special disabled veterans, under affirmative action programs created pursuant to other laws enforced by OFCCP. The paragraph should be revised either expressly to limit the discussion to affirmative action programs under the Executive Order or to expand the discussion to include affirmative action programs under all of the laws administered by OFCCP.

Sincerely,



Elizabeth Dole

Department of Transportation Reply to
General Accounting Office Draft Report
Entitled: "Equal Employment Opportunity:
Actions Needed for FAA to Enforce
Affirmative Action in the Airline Industry"

SUMMARY OF GAO'S OBSERVATIONS

In a July 1988 report, the House Committee on Government Operations concluded that: (1) the airline industry was making slow progress on affirmative action; and (2) the industry needed to do more to increase the representation of blacks, particularly black pilots, managers, and other professionals. The Committee report further stated that: (1) the Department of Labor's (DOL) Office of Federal Contract Compliance Program (OFCCP), which is responsible for enforcing the Federal contract compliance requirements, including their application to Federal contractors in the airline industry, had failed to monitor effectively the airline industry's compliance with Federal affirmative action laws and regulations; and (2) its enforcement had come to a virtual standstill since 1980.

The Committee report noted that the Federal Aviation Administration (FAA) occupies a unique relationship within the airline industry because of the agency's depth and breadth of regulatory and supervisory functions and its institutional knowledge and understanding of the industry's problems. According to the report: (1) FAA is active in equal employment opportunity (EEO) and affirmative action through its Office of Civil Rights; and (2) it would be logical for FAA to monitor the airline industry's compliance with the Federal contract compliance program requirements. The report recommended that FAA assume an oversight role for industry's compliance with Federal nondiscrimination and affirmative action laws for Federal contractors, but that OFCCP retain overall program responsibility and monitor FAA's compliance activity.

Pursuant to the Committee's report and later discussions with the Subcommittee on Government Activities and Transportation staff, the General Accounting Office (GAO) was asked to review the legal and administrative mechanisms by which FAA could assume an active oversight role in the airline industry.

The GAO draft report concludes that to accomplish the Committee's recommendation that FAA assume a shared role with OFCCP several actions would be needed: (1) the President would have to issue a

Appendix IV
Comments From the Department
of Transportation

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We assume that if the function is transferred to FAA, it would be performed by equal opportunity specialists or compliance officers in the GS-260 or GS-360 classification series, such as those currently working in the Office of Civil Rights. We do not believe that just because these individuals work at FAA would provide any more effective enforcement of affirmative action than the same classification of individuals working at DOL. Further, based on our experience in monitoring the airlines prior to the 1978 Executive Order, we do not foresee any significant advantage with equal opportunity specialists or compliance officers working in the same organization as employees engaged in overseeing air safety.

2. The FAA's principal external Civil Rights compliance program is the disadvantaged business enterprise (DBE) program.

While it is true, as the above report states, that FAA is active in EEO and affirmative action through the Office of Civil Rights, these functions are carried out primarily in regard to the agency's own (internal) employment programs. The Office of Civil Rights also has an external program component, but it is principally concerned with monitoring airport grant recipients for DBE requirements.

3. FAA has a vested interest in ensuring compliance with DBE requirements; that program consumes more than 95 percent of the resources of the Office of Civil Rights' external programs.

During fiscal years 1988 through 1992, FAA is authorized to grant over \$8 billion for airport improvements and noise compatibility programs. As a condition of receiving these funds, airport authorities must establish a written DBE program, containing percentage goals for the participation of DBE firms in airport planning and construction. Currently, over 800 airport authorities have approved DBE programs. With limited staff, these programs must be updated annually and reviewed by FAA's regional offices.

The FAA is also responsible for monitoring a statutory provision for DBE participation in airport concessions, which has not yet been implemented through a Departmental regulation. This will consume additional resources.

Additionally, because of the workload in the DBE program, relatively less attention is given to the Title VI program, another requirement of grant agreements.

4. FAA does not contract significantly with the airlines.

As a result, FAA has less direct interest in ensuring compliance with Executive Order 11246 than do other Federal agencies, such as the Department of Defense or the Postal Service, both of which contract extensively with air carriers.

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regulations, relevant staffing standards, number of persons employed at covered facilities, or the other factors that FAA had enumerated in its communications with GAO.

It was FAA's experience in dealing with OFCCP prior to 1978 that OFCCP typically made staffing estimates such as these without sufficient basis. Since the GAO report states that OFCCP would evaluate the FAA's enforcement efforts were the transfer of functions made, it appears that this would continue to be a problem. Further questions in this regard are raised by the fact that FAA transferred at least 29 positions to DOL's OFCCP in 1978, but it appears that only three or four positions are now devoted to this effort at DOL.

7. If OFCCP is not enforcing the requirements of Executive Order 11246, OFCCP's procedures should be amended rather than transferring the functions to FAA.

The recommendation of the Subcommittee to transfer the function, as stated above, was based on its finding that: (a) the airline industry has made slow progress on affirmative action, particularly with respect to black pilots, managers, and other professionals; and (b) OFCCP had failed to enforce adequately the Federal contract compliance program's affirmative actions and EEO requirements in the airline industry.

If there is evidence that OFCCP needs to improve its enforcement activities, it does not seem justifiable that the function be transferred to FAA. It would seem preferable to amend the OFCCP procedure or policies and provide additional resources to DOL. To carry this logic a step further, if it is found that OFCCP is not enforcing contract compliance of automobile manufacturers, the function could be transferred to still another Federal agency. We believe that corrective action at DOL is what is required, not a Government reorganization.

8. The Department agrees with the views of the OFCCP that responsibility for the contract compliance program should remain with one organization, in this case, OFCCP.

Pages 19 and 20 summarize the views expressed by OFCCP officials, which hold that any other approach would undermine the centralized system of compliance reviews and result in fragmented and ineffective enforcement. The Department and FAA agree.

Finally, we believe that the first full paragraph on page 20 of the draft report should delete reference to either the Office of Civil Rights or an FAA regulatory office being responsible for this function if it is transferred. Such a decision would be made by the Secretary of Transportation or delegated to the Administrator of FAA.

Deleted from final report.

Deleted from final report.

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5. Transfer of the function to FAA would result in the same difficulties that existed prior to consolidation of the program.

Some of the difficulties specifically experienced by FAA prior to the 1978 Executive Order included:

- The number of organizational layers between FAA regional offices, which were responsible for conducting compliance reviews, and OFCCP policy offices made it difficult to obtain expeditious treatment of policy questions.

For example, the Office of Civil Rights in Washington would receive a question from a regional office, then forward the matter to the Departmental Office of Civil Rights at the Office of the Secretary of Transportation (OST) level which, in turn, forwarded the matter to appropriate DOL officials. The same procedure, in reverse, would then be followed when a response was received. At each level, however, legal counsel may have become involved, which often delayed responses further.

- The OFCCP lacked line authority over FAA individuals having responsibility for the contract compliance program.
- The FAA lacked direct access to individuals at OFCCP who made policy.
- DOL regulations (41 CFR Part 60) were complex and sometimes difficult to interpret. Since guidance could not be provided quickly, enforcement sometimes came to a halt in the middle of a compliance review.
- The OFCCP criticized FAA prior to 1978 because its decentralized organization hampered enforcement. Today, the Office of Civil Rights has the same relationship with its regional offices as then.
- The FAA and DOT were not sufficiently staffed with lawyers, psychologists, and other support personnel.

With respect to legal counsel, FAA personnel were often uncertain whether they should consult with its counsel or DOL's or OST's counsel when administering the program.

6. The GAO report states that, according to OFCCP estimates, only three or four persons, including one clerical position, would be involved in the transfer.

Assuming, for the sake of argument, that FAA supported a transfer, the OFCCP estimate does not appear to be based on an analysis of the number of compliance reviews required by the OFCCP

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new executive order, amending Executive Order 11246, to define the Department of Transportation's (DOT) and FAA's specific enforcement responsibilities and to continue OFCCP's overall responsibility; (2) the Congress would have to amend the rehabilitation and Vietnam era veterans' acts; (3) the Congress would have to appropriate funds, or provide for the transfer of staff and resources from OFCCP, to FAA; (4) the Secretary of Transportation would have to redelegate appropriate program responsibilities and functions to FAA; and (5) OFCCP and FAA would need to enter into a memorandum of understanding defining each agency's role.

According to the GAO report, DOT, FAA, and OFCCP believe that OFCCP should retain sole responsibility for the Federal contract compliance program. The primary reason cited was that any other approach would undermine the centralized system of compliance reviews and result in fragmented and ineffective enforcement.

SUMMARY OF THE DEPARTMENT OF TRANSPORTATION'S POSITION

After careful consideration and review of the GAO report, the Department is unable to concur with the recommendation to transfer responsibility from DOL's OFCCP to FAA for monitoring the airlines under Executive Order 11246.

We recognize that the recommendation to transfer this function was made by the House Subcommittee on Government Activities and Transportation, and that the GAO report is concerned with the narrower question of how to effect the transfer. Nevertheless, we believe it is important to comment on the merits of the proposed transfer itself, which follow:

1. We do not believe that transferring responsibility to FAA would ensure more effective enforcement of Executive Order 11246.

The draft report, citing the Subcommittee's finding, recommends that FAA assume an oversight role for the airline industry's compliance with Federal nondiscrimination and affirmative action laws for Federal contractors.

While it is true that FAA is responsible for ensuring air safety, we do not agree that having that function would necessarily enhance monitoring of affirmative action requirements. Safety and other FAA regulatory functions are generally carried out by engineers and others having appropriate technical expertise. These individuals are not necessarily familiar with Executive Order 11246.

Comments From the Department of Transportation



U.S. Department of
Transportation

Assistant Secretary
for Administration

400 Seventh St., S.W.
Washington, D.C. 20590

JUL 17 1989

Mr. Lawrence H. Thompson
Assistant Comptroller General
Human Resources Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Thompson:

Enclosed are two copies of the Department of Transportation's comments concerning the U.S. General Accounting Office draft report entitled, "Equal Employment Opportunity Needed for FAA to Enforce Affirmative Action in the Airline Industry."

Thank you for the opportunity to review this report. If you have any questions concerning our reply, please call Bill Wood on 366-5145.

Sincerely,

Melissa J. Allen *bj*

Jon H. Seymour

Enclosures

covered by the Executive Order (e.g., race, sex). We suggest that the phrase "regardless of race, color, religion, sex or national origin" be added to the end of the sentence as a clarification. A similar description of the Executive Order is contained throughout the draft report, accordingly, these changes should also be made as appropriate.

The description of individuals covered by the two laws in the first sentence of the second paragraph of the draft report should be revised. The groups are described as "handicapped individuals" and "Vietnam era and disabled veterans." However, amendments to each law changed these descriptions, respectively, to "individuals with handicaps" and "special disabled veterans and veterans of the Vietnam era" respectively. See, the 1986 amendments to the Rehabilitation Act which substituted the phrase "individuals with handicaps" for "handicapped individuals." Pub. L. 99-506. Likewise amendments to the Vietnam Era Veterans' Readjustment Assistance Act limited the group of veterans covered under 38 U.S.C. §2012 to a defined group of disabled veterans. Consequently, an unqualified statement that disabled veterans are covered by the law is inaccurate. References to these covered groups occur throughout the draft GAO report and should be changed accordingly.

Now on p. 1.

The third sentence of the first full paragraph on page 4 states that "section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 prohibits federal contractors and subcontractors from discriminating against Vietnam-era veterans and disabled veterans." Also, as in Section 503, it is qualified covered individuals who are protected. As previously mentioned, the Act's protections do not extend to all disabled veterans, but have been limited by amendment to special disabled veterans. In addition, we recommend that you cite the enabling legislation as 38 U.S.C. §2012, rather than as Section 402, because that section is to the initial amendment of the statute not the original enactment.

Now on p. 5.

The fourth sentence in the first full paragraph on page 11 describes the scope of the two laws discussed only as extending to employees. Both laws protect applicants as well as employees.

Now on p. 17.

Finally, the second sentence on page 32 generally describes the purpose of an affirmative action program mentioning women and minorities. However, there are affirmative action objectives for other groups, i.e., individuals with handicaps and Vietnam era

Comments From the Department of Labor

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

10 11 1989

Mr. Lawrence H. Thompson
Assistant Comptroller General
Human Resources Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Thompson:

Thank you for the opportunity to review and comment on the General Accounting Office (GAO) draft report entitled "Equal Employment Opportunity: Actions Needed for FAA to Enforce Affirmative Action in the Airline Industry." We continue to be of the view that the transfer of any enforcement responsibility to the Federal Aviation Administration (FAA) would be counterproductive to the Federal contract compliance program. However, we recognize that the draft GAO report does not reach this threshold issue and, therefore, we have confined our comments and recommendations to the substance of the draft report.

In our view, the report would benefit from an expanded discussion of the enormous legal and administrative problems which may occur if FAA were to resume a role in the enforcement of contract compliance equal employment opportunity laws. For example, contract compliance investigations increasingly require specialized knowledge of discrimination law, statistics, reasonable accommodation of individuals with handicaps, personnel practices, etc. We anticipate that development of full expertise in another agency would take substantial time and would require a duplication of resources and efforts. Further, it would probably be more difficult for the Office of Federal Contract Compliance Programs (OFCCP) to monitor the quality of compliance reviews and communicate with investigators about the status, development and resolution of investigations done by FAA. The development of expertise, monitoring of case quality, and communication regarding cases would be particularly important if investigations are not conducted by FAA's Office of Civil Rights as FAA prefers (see page 20).

GAO states that it did not evaluate FAA's experience in enforcing the Federal contract compliance program prior to consolidation. However, a comparison of FAA's enforcement record prior to consolidation with OFCCP's record since consolidation and a comparison of FAA's enforcement record prior to consolidation with that of the other compliance agencies may reveal the

Now on p. 10.

Objectives, Scope and Methodology

Our work was done in response to the July 1988 House Committee on Government Operations' report and later discussions with the office of the Chairwoman, Subcommittee on Government Activities and Transportation. We were requested to determine the legal and administrative mechanisms by which FAA, as part of DOT, could assume an oversight role, with OFCCP, for the airline industry's compliance with nondiscrimination, affirmative action, and equal employment opportunity requirements under the federal contract compliance program. To achieve this objective, we obtained information on OFCCP's administration of the federal contract compliance program. We also obtained information on how FAA (1) regulates the airline industry and (2) handled the compliance program in the airline industry before consolidation in OFCCP in 1978. We performed our work between August 1988 and February 1989 in accordance with generally accepted government auditing standards.

We did not evaluate (1) OFCCP's administration of the federal contract compliance program or (2) FAA's regulation of the airline industry or its experience, before 1978, in enforcing the compliance program in the airline industry. Nor did we evaluate the desirability or feasibility of FAA assuming an oversight role in enforcing the compliance program in the airline industry.

We performed work at the Washington headquarters of Labor and DOT. At Labor, we concentrated our work in OFCCP, where we obtained information on the federal contract compliance program's

- origin and evolution;
- operation from 1965 to 1978 by 11 to 16 designated federal agencies under OFCCP's leadership and direction;
- operation on a centralized basis by OFCCP since 1978; and
- funding, staffing, and enforcement activities in OFCCP (i.e., total number of contracts covered and total investigations made) and such data for the airline industry.

We also discussed the program's enforcement with OFCCP officials and obtained their views on the Committee's proposal to have FAA assume an oversight role, with OFCCP, in the airline industry.

At DOT, we concentrated our work in DOT's and FAA's Offices of Civil Rights, where we obtained information on DOT's and FAA's

- responsibilities, activities, and staffing for the federal contract compliance program in the airline industry before 1978 and

Should conciliation fail, OFCCP may refer the case to Labor's Office of the Solicitor for consideration of administrative enforcement sanctions. Sanctions include withholding payments due, suspending or terminating the contracts, or debarring the contractor from future contracts. The Solicitor institutes enforcement actions before the Department's administrative law judges by filing administrative complaints against contractors on behalf of OFCCP. Administrative law judges' opinions are referred to the Secretary of Labor, who makes the final decision on the case. The Secretary's decisions may be appealed in federal court.

To date, OFCCP has retained sole responsibility, in coordination with EEOC, for enforcing the federal contract compliance program under Executive Order 11246 as well as the Vietnam era veterans and handicapped individuals acts.

Contract Compliance in the Airline Industry by FAA/DOT

The Federal Aviation Administration (FAA) was established by the Federal Aviation Act of 1958. FAA became a component of DOT when the Department, which was created by the Department of Transportation Act of October 15, 1966, became operational in 1967. Among other things, FAA is charged with regulating air commerce, controlling the use of airspace, regulating both civil (airline industry) and military operations of such space, and operating a common system of air traffic control.

Pursuant to Executive Order 11246, in October 1969 Labor gave DOT responsibility for enforcement of the federal contract compliance program in the airline industry. DOT re delegated this responsibility to FAA, which operated the program, under OFCCP's regulations and procedures, through its Office of Civil Rights. The Office of Civil Rights, headquartered in Washington D.C., performed compliance reviews—including preaward compliance reviews⁸—through FAA's regional offices.

Before being finalized and issued, the FAA regional compliance reports were reviewed by headquarters, DOT's Office of Civil Rights, and OFCCP. Any sensitive or controversial matters (i.e., cases involving conciliation agreements or litigation) were handled by DOT's Office of Civil Rights in consultation with OFCCP.

⁸OFCCP's regulations provide that companies selected to receive government contracts of \$1 million or more are subject to a preaward compliance review to determine their adherence to nondiscrimination and affirmative action requirements.

Appendix I
Description of the Federal Contract
Compliance Program

As a result of the OFCCP study and other studies citing deficiencies in the government's equal employment opportunity enforcement, President Carter took steps, through both an executive order and a reorganization plan, to address those deficiencies. On February 23, 1978, he submitted to the Congress Reorganization Plan No. 1 of 1978, which made EEOC the principal federal agency in equal employment enforcement. Under the plan, however, Labor retained responsibility for the federal contract compliance program. In conjunction with the plan, the President also issued an executive order on October 1, 1978, to consolidate the contract compliance program, then the responsibility of Labor and 11 compliance agencies,⁷ in Labor (with 1,517 positions and \$33.1 million being shifted to the OFCCP).

The plan stated that consolidation would (1) promote consistent standards, procedures, and reporting requirements; (2) remove contractors from the jurisdiction of multiple agencies; (3) prevent an agency's equal employment objectives from being outweighed by its procurement and construction objectives; and (4) produce more effective law enforcement through unification of planning, training, and sanctions.

On October 5, 1978, President Carter issued Executive Order 12086, "Consolidation of Contract Compliance Functions for Equal Employment Opportunity," to carry out the consolidation and shifting of funds and personnel and to amend Executive Order 11246 to reflect the transfer of enforcement responsibility to the Secretary of Labor. OFCCP has issued regulations detailing the requirements for the federal contract compliance program under Executive Order 11246 as well as 38 U.S.C. 2012, as amended, and section 503.

OFCCP's regulations require each federal contractor and subcontractor with 50 or more employees and a federal contract of \$50,000 or more to develop, implement, and update annually at each of its facilities an affirmative action program. The affirmative action program's objectives are to have the contractors (1) identify areas within their organizations where the use of minorities, women, and other qualified covered employees is less than would reasonably be expected based on their current availability in its own work force and in the labor market and (2) seek to eradicate discrimination by identifying and correcting barriers to the employment of minorities and women in all levels of the contractors' work force.

⁷The original 16 delegate agencies were reduced to 11 through consolidation of several agencies' responsibilities.

have entered into several memorandums of understanding to (1) coordinate operations of the two programs, (2) reduce duplication of compliance activities, (3) facilitate the exchange of information, and (4) establish procedures for processing discrimination cases against federal contractors.

OFCCP Established

Under Executive Order 11246, as amended, federal contractors and subcontractors are prohibited from discriminating in employment and hiring and, with certain exceptions, are required to eliminate employment discrimination and take affirmative action to provide equal employment opportunity to all employees and job applicants, regardless of race, color, religion, sex, or national origin.

The executive order also transferred to the Secretary of Labor the responsibility and authority originally assigned to President Johnson's Committee on Equal Employment Opportunity. In October 1969, under his authority in the order, the Secretary designated the 16 major federal procuring agencies and departments responsible for achieving compliance with the order's requirements. The agencies were assigned compliance responsibility primarily on an industry basis. For example, the Department of Transportation (DOT) was responsible for the air transportation industry.

The Secretary of Labor delegated to the Office of Federal Contract Compliance Programs (OFCCP), within the Employment Standards Administration, the responsibility and authority to administer the order and issue implementing regulations. The mission of OFCCP and the 16 procurement agencies was to (1) establish nondiscrimination and affirmative action policies, standards, and procedures as conditions for prospective and continued contract eligibility; (2) identify contractors that were in violation of those requirements; (3) remedy violations through conciliation; and (4) where conciliation failed, achieve compliance by withholding contract awards, applying contract sanctions, and, if necessary, using judicial litigation.

Description of the Federal Contract Compliance Program

The federal contract compliance program began when President Roosevelt issued Executive Order 8802 on June 25, 1941. This order required all federal contracting agencies to include in their defense contracts a provision obligating the contractors not to discriminate against any worker because of race, color, creed, or national origin. The President established a five-member Committee on Fair Employment Practice in the Office of Production Management to administer the order, including handling complaints of discrimination in national defense industries.

On May 27, 1943, President Roosevelt issued Executive Order 9346, which reaffirmed the federal government's policy of prohibiting discrimination in employment in war industries or in government by reason of race, creed, color, or national origin. The order established a new Committee on Fair Employment Practices to formulate policies to achieve the order's purposes. Executive Order 9346 also directed all federal contracting agencies to include a provision making it obligatory on the contractor not to practice discrimination against any employee or applicant for work and to include such a provision in all subcontracts.

There was a hiatus of executive order activity on fair employment until December 3, 1951, when President Truman issued Executive Order 10308. This order created the President's Committee on Government Contract Compliance, composed of 11 persons, 6 representing the public and 5 representing the principal federal procurement agencies. This committee was authorized to determine how contracting agencies' rules, procedures, and practices relating to compliance with the nondiscrimination provisions in contracts could be improved. The order stated that the head of each contracting agency was primarily responsible for obtaining compliance by contractors and subcontractors.

In August 1953, President Eisenhower issued Executive Order 10479, which reiterated the federal contracting agencies' responsibility for obtaining compliance with the government's nondiscrimination in employment requirements. This order also created a Government Contract Committee composed of 14 members—8 from the public and 6 from the principal federal contracting agencies. The committee was directed to recommend to contracting agencies how they could improve and make more effective the nondiscrimination provisions in government contracts. In addition, the committee was authorized to (1) receive complaints of alleged violations of the nondiscrimination provisions, (2) refer the complaints to contracting agencies for appropriate action, and (3) review the agencies' actions on all complaints.

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Abbreviations

DOT	Department of Transportation
EEOC	Equal Employment Opportunity Commission
FAA	Federal Aviation Administration
OFCCP	Office of Federal Contract Compliance Programs

Agency Comments

In letters commenting on a draft of this report, both Labor and DOT disagreed with the Committee's recommendation to transfer OFCCP's responsibility for the airline industry to FAA (see apps. III and IV). DOT stated it does not believe transferring responsibility to FAA would ensure more effective enforcement of Executive Order 11246 since (1) FAA's regulatory staff does not have the expertise and familiarity with the order, (2) FAA does not contract significantly with the airlines and has less direct interest in ensuring compliance with the order than do other federal agencies that contract extensively with air carriers, and (3) FAA's Office of Civil Rights has limited staff that is completely absorbed in monitoring compliance by recipients of airport improvement grants to ensure participation of minority firms under DOT's Disadvantaged Business Enterprise Program.

In its written comments Labor stated that in its view the transfer of any enforcement responsibility to FAA would be counterproductive to the federal contract compliance program and that such a transfer would create enormous legal and administrative problems. Labor stated, for example, that (1) contract compliance investigations increasingly require specialized knowledge of discrimination law, statistics, reasonable accommodation of individuals with handicaps, and personnel practices, and (2) development of full expertise in another agency would take substantial time and would require a duplication of resources and efforts.

Labor noted that it would probably be more difficult for OFCCP to monitor the quality of compliance reviews and communicate with investigators about the status, development, and resolution of investigations done by FAA. Labor commented also that the development of expertise, monitoring of case quality, and communication regarding cases would be particularly important if investigations are not conducted by FAA's Office of Civil Rights, as FAA prefers.

Both DOT and Labor stated that if FAA does assume compliance enforcement authority again, it may encounter administrative problems that occurred before the program was consolidated in OFCCP. In its comments, Labor also indicated that if FAA assumes a shared role in the federal contract compliance program, an additional interagency memorandum of understanding between FAA and EEOC, such as the current one between OFCCP and EEOC, may be necessary, depending on the oversight role proposed for OFCCP in regard to FAA. We disagree with Labor. As noted in our report, if the shared responsibility in the airline industry occurs, the Committee would have OFCCP retain oversight over FAA. In view of this,

order from being interpreted as an implied revocation of Executive Order 12086 in its entirety.

Amend Legislation

Because OFCCP's responsibilities for assuring that federal contractors do not discriminate in employing handicapped individuals and Vietnam era and certain disabled veterans were authorized by statutes, these responsibilities would have to be transferred through new legislation. Such legislation would have to amend the 1973 Rehabilitation Act and the 1974 Vietnam Era Veterans' Readjustment Assistance Act to:

- Define DOT's and FAA's specific role and responsibilities in enforcing the acts' requirements in the airline industry.
- Provide that OFCCP (1) retain overall responsibility for these requirements and (2) monitor FAA's enforcement efforts.

Provide Staff and Funds to FAA

When Labor and OFCCP assumed responsibility for the federal contract compliance program pursuant to the congressionally approved Reorganization Plan No. 1 of 1978, the 11 agencies participating in the program transferred \$33.1 million and 1,517 staff positions to OFCCP. According to FAA officials, FAA transferred to OFCCP 29 staff positions and related funds that FAA had used on airline industry enforcement. In later years, the Congress appropriated funds directly to Labor and OFCCP to administer the programs. Thus, congressional approval will again be needed to transfer or appropriate funds to FAA should it be delegated responsibility for the contract compliance program in the airline industry.

- However, a review may be needed to determine the amount of funds and the number of staff positions that FAA would need since FAA and OFCCP disagree on this issue.

We asked OFCCP officials about the number of staff positions and amount of funds that should be transferred to FAA should it assume an enforcement role in the airline industry. OFCCP officials told us that transferring compliance activity to FAA in 1989 would involve the transfer of only three or four staff positions, which would include one clerical support position. In addition, OFCCP would transfer about \$140,000 in funds to cover salaries, travel, and training expenses for the transferred positions.

certain disabled veterans. Both acts require such contractors or subcontractors, including those in the airline industry, to take affirmative action to employ and advance qualified covered job applicants and employees. OFCCP was given responsibility for administering these sections as part of the federal contract compliance program.

Following criticism of the federal contract compliance program, in March 1977, Labor established a task force to assess the program's operations and develop a plan for improvements. In September 1977, the task force issued a report criticizing the fragmented responsibility for Executive Order 11246 among OFCCP and the major procurement agencies and recommending that the program be consolidated in OFCCP.

As a result of the OFCCP report and other studies concerning federal equal employment opportunity enforcement, President Carter submitted to the Congress Reorganization Plan No. 1 of 1978. After the plan was approved by the Congress, the President issued Executive Order 12086 on October 5, 1978, (1) to consolidate the federal contract compliance program, then the responsibility of Labor and 11 compliance agencies,⁴ under Labor and OFCCP and (2) to shift 1,517 staff positions and \$33.1 million from the 11 agencies to Labor and OFCCP to carry out the delegated responsibilities. OFCCP currently retains responsibility for enforcing the compliance program under Executive Order 11246 as well as the programs for disabled and Vietnam era veterans and handicapped persons.

OFCCP's regulations for the program require that each federal contractor and subcontractor with 50 or more employees and a federal contract of \$50,000 or more develop, implement, and update annually at each of its facilities an affirmative action program. As of March 1986, about 265,000 contractors, employing 21 million workers, were subject to OFCCP's requirements. In July 1987, the Congressional Research Service estimated that OFCCP's programs cover \$167 billion in government contracts. OFCCP's regulations apply to virtually all of the 56 FAA regulated airlines, which in 1986 had a total work force of approximately 337,000. The airline industry receives billions of dollars in government contracts annually. Two of the largest federal contractors are the U.S. Postal Service and the Defense Department's Military Airlift Command, which awarded an estimated \$1.7 billion in contracts to airlines in fiscal year 1987.

⁴The original 16 agencies were reduced to 11 through consolidation of responsibilities in several agencies.

FAA to monitor the airline industry's compliance with the federal contract compliance program requirements. The report recommended that FAA assume an oversight role for the airline industry's compliance with federal nondiscrimination and affirmative action laws for federal contractors. The report recommended, however, that OFCCP retain overall program responsibility and monitor FAA's compliance activity.

Pursuant to the Committee's report and later discussions with the Subcommittee's office, we were asked to review the legal and administrative mechanisms by which FAA could assume an active oversight role in the airline industry.

Objectives, Scope, and Methodology

Our report is based on work performed at the Washington, D.C., headquarters of Labor and DOT. At Labor we obtained information on OFCCP's enforcement of the federal contract compliance program in general and in the airline industry in particular. At DOT we obtained information on FAA's regulatory activities in the airline industry and its handling of the program in this industry before the program's consolidation in OFCCP in 1978. We also reviewed the program's legislative history. Our work was done between August 1988 and February 1989 in accordance with generally accepted government auditing standards.

We did not evaluate OFCCP's administration of the federal contract compliance program. Nor did we evaluate FAA's regulation of the airline industry or its experience, before 1978, in enforcing the program in the airline industry. Finally, we did not evaluate the desirability or feasibility of FAA assuming a role in enforcing the program in the airline industry. Detailed information on our objectives, scope, and methodology is presented in appendix II.

Brief History of the Federal Contract Compliance Program

To prevent employment discrimination by federal contractors and to ensure that all Americans working on such contracts are afforded equal employment opportunity, the federal government began a contract compliance program nearly 50 years ago. The program began when President Roosevelt issued Executive Order 8802 in June 1941. That order and later amendments required contracting agencies to include in their contracts a provision that the contractors and subcontractors would not discriminate against any employee or applicant for employment because of race, color, creed, or national origin. Special committees on fair and equal employment practices established by succeeding Presidents' executive orders continued to oversee the government's efforts to prevent

In its report on these problems, the House Committee on Government Operations recommended that FAA, as a shared responsibility with OFCCP, assume a role in enforcing affirmative action and equal employment opportunity in the airline industry. In the Committee report and in later discussions with your office, we were asked to review the legal and administrative mechanisms under which FAA could assume an active oversight role, with OFCCP, as part of its regulation of the airline industry.

Results in Brief

To accomplish the Committee's recommendation that FAA assume a shared role with OFCCP, several actions need to be taken:

- The President would have to issue a new executive order, amending Executive Order 11246, to define DOT's and FAA's specific enforcement responsibilities and to continue OFCCP's overall responsibilities.
- The Congress would have to amend the Rehabilitation and Vietnam Era Veterans acts to define DOT's and FAA's specific enforcement responsibilities and to continue OFCCP's overall responsibilities for the handicapped persons and Vietnam era and disabled veterans portion of the federal contract compliance program.
- FAA and OFCCP should undertake a review to determine the staff and funds FAA will need to enforce the federal contract compliance program in the airline industry.
- The Congress would have to approve new legislation or the President would have to submit, for congressional approval, a reorganization plan to appropriate and/or transfer from OFCCP to FAA the necessary funds and staff for FAA to carry out its new responsibilities.

In addition:

- The Secretary of Transportation would have to take action to redelegate the federal contract compliance program responsibilities to FAA in order for FAA to assume the responsibilities, and
- OFCCP and FAA would have to enter into a memorandum of understanding to define each agency's specific responsibilities, including OFCCP's oversight and monitoring responsibilities.

In commenting on a draft of this report, both Labor and DOT disagreed with the Committee's recommendation, expressing their opinion that responsibility for the federal contract compliance program should remain with one organization—OFCCP. The departments said that the

