

U.S. DEPARTMENT OF LABOR
OFFICE OF THE DEPUTY SECRETARY
WASHINGTON, D.C.
20210

2005 APR -7 AM 9:20

The Honorable Tom Carper
United States Senate
Washington, DC 20510

Dear Senator Carper:

This is in response to your letter in which you requested information on the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), its enforcement of Executive Order 11246, and a data analysis conducted by one of your constituents.

OFCCP regularly conducts "glass ceiling" audits – formally known as "Corporate Management Compliance Evaluations" (CMCE's) to ensure that women and minorities do not face discriminatory barriers to advancement into corporate management positions. OFCCP conducts CMCEs of federal contractors with 4,000 or more employees and more than one reporting subordinate establishment. Priority in scheduling CMCEs is given to eligible contractors that have not undergone a compliance evaluation in the recent past. The focus of a CMCE is on the federal contractor's obligation to make good faith efforts to extend equal employment opportunities to all levels of the workforce. Specifically, CMCEs determine whether there is any unlawful discrimination in the company's selection process for mid-level and senior corporate management positions.¹

Typically, CMCEs are initiated *sua sponte* by the agency, though such reviews could also be triggered by a complaint. By way of comparison, nearly all the investigative work of the Equal Employment Opportunity Commission is complaint-driven.

During OFCCP investigations, agency compliance officers examine how the employment practices of a company impact all employees, including minority and non-minority workers. In enforcing Executive Order 11246 (Parts II and III) for federal contractors which is the area of our jurisdiction, OFCCP examines whether a contractor is discriminating against *any* racial or ethnic group. When OFCCP finds workplace discrimination, it recovers lost earnings and secures jobs for affected workers.

In fiscal year 2005, OFCCP collected a record \$45,156,462 for 14,761 Americans who had been subjected to unlawful employment discrimination. This monetary recovery reflects a 42% increase over the recovery in fiscal year 2000 and a 56% increase over fiscal year 2001.²

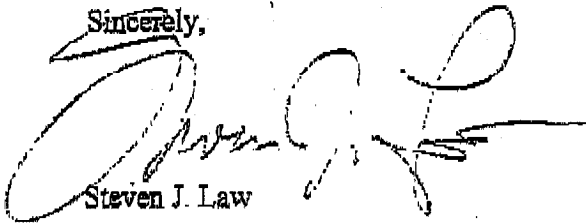
¹ More information about CMCEs can be found by going to <http://www.dol.gov/esa/regs/compliance/ofccp/fags/cmcefacts.htm>.

² More information can be found on OFCCP's fiscal year 2005 results by going to <http://www.dol.gov/esa/ofccp/enforc05.htm>.

In addition, you asked for our comments on a report given to you by one of your constituents. While OFCCP does not normally engage in peer review of such analyses because such use of resources falls outside the scope of our law enforcement mission, we wanted to accommodate your request and had it reviewed by our staff Ph.D. statistician and a senior labor economist. The attached paper reflects comments based on their knowledge of available data bases and of the use and utility of the Form EEO-1 and other reporting mechanisms.

I hope this information will be helpful to you and your staff. If you have any further questions, please let me know. You may be assured that ensuring equal opportunity is vital to this Department and this Administration, as evidenced by our record enforcement results on behalf of victims of discrimination in the workplace.

Sincerely,



Steven J. Law

*I enjoyed meeting with
you and your staff -
hope this is helpful to you!*

Assessment of Delaware Constituent Analysis

The Office of Federal Contract Compliance (OFCCP) dates back to 1965, when Executive Order (EO) 11246 was signed by President Lyndon B. Johnson. EO 11246 (Parts II and III) created OFCCP to enforce nondiscrimination in employment by government contractors and subcontractors.

OFCCP enforces three legal authorities: EO 11246 (Parts II and III), Section 503 of the Rehabilitation Act of 1973, and the Veterans' Readjustment Assistance Act of 1974. These authorities prohibit Federal contractors and subcontractors from discriminating on the bases of race, color, religion, sex, national origin, disability and protected veteran status. Broader workplace discrimination issues are beyond OFCCP purview and are addressed by the Equal Employment Opportunity Commission (EEOC), an independent Federal agency.

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OFCCP does not normally engage in peer review of studies because such use of resources falls outside the scope of its law enforcement mission. We do, however, offer several comments on an analysis provided by a Delaware constituent of Senator Tom Carper's, and provide some national statistics on the matter. At the outset, we observe that a meaningful conclusion in this matter cannot be drawn by merely analyzing statistics on the national level. As is outlined below, our review of the constituent analysis found several shortcomings that suggest the findings are not of sufficient informative value upon which to base a conclusion.

We compared the constituent analysis to a parallel study that uses data supplied from the Census Bureau's EEO Tool website. For each of seven race and ethnicity categories in combination with gender status (which we refer to as a "class"), the constituent compares the percentage of each class in EEOC employment category #1, Officials and Managers,⁴ relative to the class pool employment.⁵ This produces a value for the class' rate of opportunity to advance to a management position. Specifically, for Asian and Pacific Islanders, the constituent simply divides the estimate of the total number of Asian managers, 159,582 (column 2), by the total pool employment, 946,813 (column 6), to yield a rounded management rate of 0.17 or 17 percent. Second, the constituent compares this rate to the corresponding value for the total workforce, 30.9 percent, to yield a final fractional ratio of 0.55 (column 14 = .17/.309).

We note that the data in Attachment A does not correspond to the EEO-1 special tabulation data reported by the Census Bureau. This, we suspect, may be due in part to the constituent's sole focus on private industries. In any case, using the employers who report to EEOC, the Census

³ More information can be found on OFCCP's fiscal year 2005 results by going to <http://www.dol.gov/esa/ofccp/enforc05.htm>.

⁴ See <http://www.census.gov/hhes/www/eoindex/ohgrouns.pdf> for the EEO-1 categories.

⁵ Including EEO-1 categories, professionals, technicians and sales workers. This produces column 6 in Attachment A of Woo's letter.

data presented in Table 1 shows a total workforce of 137 million. Applying this fuller data set to the constituent's very simple methodology results in a fractional ratio of 0.71, compared to the .55 value in his "study".

Table 1: Replication of Constituent's Methodology Using Census 2000 EEO Data

Category	(1) Total Emp.	(2) Officials/Managers or OM	(3) Professional	(4) Technicians	(5) Sales/Workers	(6) Total of Column 3,4,5	(13) Ratio of O&M to (6)	(14) Fraction of (13) to National Average
All Employees	137,688,790	15,344,495	25,101,105	3,137,850	15,502,575	43,741,530	0.35	1.00
White	100,177,995	12,093,880	19,929,990	2,366,405	11,847,530	34,143,925	0.37	1.06
Asian/P.I.	5,298,159	569,165	1,534,800	151,655	594,905	2,281,360	0.25	0.71

Source: Census 2000 EEO Data Tool: <http://www.census.gov/cgi-bin/hroker>

At the same time, the constituent's highly undeveloped methodology fails to consider a variety of factors that influence eligibility for management positions. While he alludes to the differences in educational attainment among the various classes as a consideration in reviewing management opportunities in his letter, he does not use this information to adjust his analysis. This is not an insignificant weakness. The Census Bureau reports⁶ that among persons age 15 and older, 26.7 percent of the general population holds a bachelor's degree or higher. By contrast, among Asian Americans the rate is 47.2 percent.⁷ This would suggest on the surface that the eligibility rate of Asian Americans for management positions is considerably higher than the figures utilized.

This, however, is not the only analytical weakness of the constituent's "study." While educational attainment plays a role in determining the eligible pool for management jobs, we also demonstrate (below) the importance of examining the field of the degree. Based on the Survey of Income and Program Participation, 2001 Panel, the Census Bureau reports that, among persons holding EEO-1 category I management positions with a bachelor's degree, 42 percent have a degree in business.⁸ By comparison, only 10 percent of the persons holding management positions have degrees in engineering. In the professional and technical categories, the rate of business degree holders drops to between 10 and 12 percent, and the rate of engineering degrees climbs to 36 to 39 percent. Hence, among persons in management with college degrees, the ranks are dominated by those in business or non-engineering fields. According to the National Science Foundation⁹, in 2000 approximately 33 percent of degree holders in the general population held degrees in science and engineering. Among Asian American college degree

⁶ <http://www.census.gov/population/socdemo/education/ppi-169/tab01.xls>

⁷ These values are similar to those reported in the report "We the People" Asians in the United States" U.S. Census Bureau Report issued December 2004, by Terrance J. Reeves and Claudette E. Bennett which reports that 44 percent of Asian Americans hold a bachelor's degree compared to 24 percent in the general population (page 12).

⁸ See Table 7A, Occupation by Educational Attainment and Field of Degree, U.S. Census Bureau - <http://www.census.gov/population/socdemo/education/sipp2001/tab7A.xls>.

⁹ <http://www.nsf.gov/statistics/nsf02329/sectb.htm>

holders, approximately 48 percent held degrees in science and engineering. This indicates that a lower percentage of Asian Americans would tend to fit the degree profile of the current management workforce.

It is also important to note another point which the constituent's analysis glosses over: while educational attainment and degree field play a role in determining management opportunity, the EEO category 1 includes a wide variety of management positions. As such, some of these positions would not be considered an advancement opportunity among those currently holding professional positions, which forms the basis of the constituent's analysis.¹⁰ The Government Accountability Office has pointed out the limitations of applying the Census Bureau's Current Population Study (CPS) to studies involving managerial positions¹¹: "There are two major limitations on the use of CPS data. First, the CPS occupational classifications do not distinguish between supervisory and nonsupervisory employees, which is important for the long and short duties tests under the Fair Labor Standards Act (FLSA). Therefore, one job title, 'managers and administrators,' could include the President of General Motors, but it may also include a receptionist. Second, CPS respondents self-identify their duties which raises questions of accuracy and could result in overestimates of the number of management employees and, consequently, may overestimate the number of exempt employees." Many management positions, such as those in construction, may have no or a negative relation to higher education. Moreover, those holding certain degrees, especially advanced degrees, may not seek out such positions.

We also note that the constituent presents data on the age profiles of the different classes (also not considered in his calculations) to suggest that an underlying age differential is relevant to understanding the alleged problem. In contrast, based on the Census Bureau report, "The Asian and Pacific Islander Population in the United States," Asians are only slightly younger than the population as a whole (26% are under age 18, vs. 23% for the general population). Age, therefore, is not a significant factor in exploring this issue. These types of overall comparisons may mask potential relationships or highlight ones that do not exist in the presence of more detailed information. A more comprehensive study would be required to identify any influence age may have on the opportunity for Asian Americans to enter into management positions.

In sum, the constituent's "study" fails to account for educational differences that exist among the classes and the broad nature of the different management positions included in the EEO-1 management category. The factors discussed herein likely represent only a fraction of all the factors that in reality influence an individual's opportunity to enter into a management position. In order to conduct a more meaningful study, the constituent would need to conduct a thorough review of the literature available on these topics to identify key factors and considerations involved in conducting analyses of this type. With regard to available data sources, we recommend that such a researcher contact the Census Bureau and other agencies to identify

¹⁰ EEOC has recently changed the EEO-1 form to split this category into two levels to segment lower and middle management from the upper levels. See - <http://www.eeoc.gov/press/1-27-06.html>.

¹¹ (GAO/HEHS-99-164, pg. 42)

available *individual or similar detailed* employment data to conduct a regression, logit or similar analysis. With such an analysis, such as the Peters-Belson method,¹² one could develop a mathematical model to predict management position status (appropriately defined) based on a variety of individual characteristics including degree field, degree level, current and prior position type, level of experience and potential age at degree attainment, for the general population. Using this model, one could apply the formula to the Asian American population to predict the level of management positions this class would be expected to hold and if they were treated the same as the general population. In turn, one could then compare these expected counts to the actual figures, similar to those in the constituent's table, to gauge the presence of any "glass ceiling" phenomenon. While we have only addressed the overall employment and educational profile of Asian Americans in the general workforce population in this response, we suggest that such methods also would be useful for studying the glass ceiling issues in academia and government.

Lastly, we note that the previously mentioned report, "We the People: Asians in the United States," shows that 45 percent of Asian Americans were employed in management, professional and related occupations, compared to 34 percent of the total population. The report also indicates that Asian American men and women who worked full-time had higher median earnings than all other men and women. The median income of Asian American families was over \$9,000 higher than the median income of all families in 1999.

In sum, while this Delaware constituent has usefully raised an issue that OFCCP has worked diligently on for a number of years, his work product fails to meet minimum standards for scholarly research and meaningful statistical analysis.

¹² See as one reference, Nayak, Tapan, K., Gaswirth, Joseph, L. (1995) Statistical Measures of Economic Discrimination Useful in Evaluating Fairness, Proceedings of the Biopharmaceutical Section of the American Statistical Association, pages 87-94