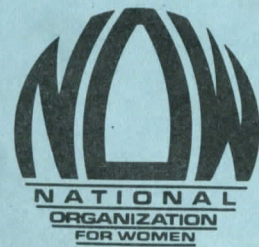


and Justice for
ALL



...AND JUSTICE FOR ALL

Federal Equal Opportunity Enforcement Effort
against Sex Discrimination

Federal Compliance Committee

Ann Scott
Lucy Komisar

N O W
National Organization for Women
1957 East 73rd St., Chicago. Ill. 60649
Copyrighted NOW 1971

PURPOSE OF THIS REPORT

During the last decade, Americans have become increasingly aware of the tragic and destructive existence of discrimination against women in every area of economic life. The members of Congress and two Presidents of the United States have recognized the severity of the economic consequences of this discrimination by passing four powerful mandates designed to combat it. However, the experience of working women in this country has hardly changed. Women are still confined to the least desirable, least rewarding jobs, and the nation continues to be deprived of the skills and contributions of over half the adult population. This discrimination continues to exist because passing laws and issuing Executive Orders are not enough--they must be vigorously enforced, and the Federal government has largely refused to carry out its own enforcement responsibilities in the area of sex discrimination.

Independent evaluation of enforcement programs and procedures is desperately needed, but there is no Federal body whatsoever at present charged with that responsibility. The U. S. Civil Rights Commission is empowered by law to investigate discriminations only on the bases of race, religion, color and national origin--but not sex; therefore the whole subject of civil rights enforcement for women was necessarily omitted from its 1100 page report of last December.

Without accountability or the responsibility for making their enforcement records against sex discrimination available to Congress and the public, the administering agencies are in effect encouraged to slight sex discrimination in their programs.

This report is issued by the National Organization for Women (NOW) in the interest of supplementing the Civil Rights Commission's study for the informing of Congress and the public, and for providing an account of NOW's efforts to achieve effective enforcement of equal employment opportunity for all working women in America.

Ann Scott
Lucy Komisar

TABLE OF CONTENTS

Purpose of NOW's Report

- I. Laws and Executive Orders Requiring Equal Opportunity for Women, and the Agencies that Enforce Them
 - A. Executive Order 11246 as Amended: the OFCC
 - B. Title VII of the Civil Rights Act of 1964: the EEOC
 - C. The Equal Pay Act of 1963: The Wage and Hour Division
 - D. Executive Order 11478: The Civil Service Commission

- II. Lack of Enforcement of Equal Opportunity Guarantees for Women
 - A. Introduction: Letter from Gene Boyer
 - B. Lack of Agency Commitment
 1. Office of Federal Contract Compliance (OFCC)
 - a. Sex Discrimination Guidelines
 - b. Affirmative Action--Goals and Timetables
 - c. Secretary of Labor's Statement
 - d. Women as a minority
 - e. Standards for Determining Availability
 - f. The Women's Availability Committee
 - g. The Secret Memo
 - h. Defense Department Actions
 - i. Form A
 - j. "Prompt investigation" of Complaints
 - k. Regulations under Order #4
 - l. **The Moynihan Effect**

 2. The Equal Employment Opportunity Commission (EEOC)
 - a. Report of the U. S. Civil Rights Commission
 - b. Report by the Brookings Institution
 - c. Sexism in EEOC and Staff Attitudes
 - d. EEOC studies ignore women
 - e. EEOC Literature Encourages Sex Discrimination
 - f. EEOC and AT&T
 - g. EEOC referrals to the Department of Justice

 3. The Wage and Hour Division, Department of Labor

TABLE OF CONTENTS (continued)

4. The Federal Government as an Equal Opportunity Employer

III. History of NOW's Efforts to Secure Enforcement

- A. OFCC
- B. EEOC
- C. Other Agencies
 1. FCC: The Federal Communications Commission
 2. The Department of Justice
 3. FAA: The Federal Aviation Administration
 4. WHD: The Wage and Hour Division
 5. The Navy Civilian Employment Program

IV. NOW's Continuing Program to Achieve Enforcement and Recommendations to the Agencies

- A. Legislation
- B. Enforcement: OFCC
- C. Enforcement: EEOC
- D. NOW Survey of Federal Departments and Agencies
- E. Proposal to House Government Operations Committee for Hearings on Enforcement Programs for Women

I
LAWS AND ORDERS PROVIDING FOR EQUAL EMPLOYMENT OPPORTUNITY
FOR WOMEN, AND THE AGENCIES THAT ENFORCE THEM

A. Executive Order 11246 as Amended by Executive Order 11375

This first order, issued in 1965, was amended in 1967 to include sex. 11375 went into effect in 1968. It prohibits Federal contractors and subcontractors from discriminating in any aspect of employment, and requires employers with contracts of \$50,000 or more to develop affirmative action programs to remedy the present effects of past discrimination. It is administered by the Office of Federal Contract Compliance (OFCC) of the U. S. Department of Labor, which determines the policy and standards of enforcement. Enforcement is implemented by 15 compliance agencies in various executive departments and agencies. It also prohibits discrimination in Federal employment, but not on the basis of sex.

B. Title VII, Civil Rights Act of 1964

This law bans discrimination on all the bases in access, promotion, benefits, and terms of employment by private employers of 25 or more, labor organizations, employment agencies and union-management apprenticeship programs. It excludes teachers, professors, and government employees. It is administered by the Equal Employment Opportunity Commission, which has powers of conciliation but not enforcement. Victims of discrimination must go to court to secure the protection of Title VII.

C. Equal Pay Act of 1963

This law, first introduced in 1946 by Representative Helen Gahagan Douglas, guarantees both men and women equal pay for equal or substantially similar work. Under the Fair Labor Standards Act which it amends, it is administered by the Wage and Hour Division of the Labor Department, and extends to all those subject to minimum wage. It excludes all executive, administrative, and professional jobs, and most public service. Court decisions have interpreted the law broadly to apply to jobs that are the same in substance but not identical.

4. (I)

D. Executive Order 11478

This amends Executive Order 11246 to prohibit sex discrimination in Federal Employment. Issued in 1969, it is administered by the U. S. Civil Service Commission, and requires the head of each executive department and agency to maintain an affirmative program of equal employment opportunity for women. The Civil Service Commission also administers the Federal Women's Program, which aims to improve the status of women in Federal employment. Grievances are filed with the Civil Service Commission.

II THE LACK OF EQUAL OPPORTUNITY ENFORCEMENT FOR WOMEN

A. The state of enforcement of equal opportunity for women required by federal laws and orders is a national disgrace. As a striking example and evidence of this charge, we offer a letter dated November 20, 1970 to Elizabeth Duncan Koontz, Director of the Women's Bureau of the U. S. Department of Labor, from Gene Boyer, a business woman and Chairwoman of the Beaver Dam (Wisconsin) Mayor's Commission on the Status of Women. Her letter describes a meeting of the Wisconsin Chamber of Commerce at which a panel of government experts spoke on equal employment opportunity. During this meeting, the subject of equal opportunity for women was alternately ridiculed or dismissed as unimportant:

Dear Mrs. Koontz,

...It was ... with shock and dismay that I listened yesterday to a panel of government experts address the annual meeting of the Wisconsin State Chamber with statements clearly indicative of an attitude which can only be described as insensitive to the needs of women in the labor force. The astonishing premise that the plight of racial and ethnic minorities is to be given priority over other disadvantaged persons, particularly women, was unmistakable in the message delivered. There was even the veiled suggestion that progress for minorities at the expense of women, while regrettable, might be unavoidable....and, therefore, acceptable?

I listened with near disbelief to a half-hour presentation by Victor Stricklin, Contract Compliance officer for the Chicago office of the Department of Defense, in which he did not mention women once! He spelled out in detail the affirmative action program for minorities using male terminology throughout.

In his responses during the question-answer period, Mr. Stricklin asserted:

- His repetitive use of the term "minorities" did not include women;
- The omission of women from his formal presentation was intentional and based on the fact that women are not included by Order #4, although he did not say by whose interpretation;
- There are no guidelines for affirmative action designed to eliminate sex-based discrimination. (Were not guidelines issued on June 9, 1970?)

6. (II-A)

To make certain I had not misunderstood his statements, I asked Mr. Stricklin to repeat them after the formal meeting, which he did. He then added that guidelines for affirmative action programs were "in preparation," but he had not seen them. The fact that the guidelines are forthcoming was never brought to the attention of the several hundred employers and other members of the Chamber of Commerce in attendance, who must have left the meeting with the same impression I did: "Women don't count."

Reinforcing this view were statements by Mr. Joseph Fagan, Executive Director of the EEOC, regarding sex-segregated classified advertisement headings for help-wanted columns in newspapers. Grinning toward the press table, he said, "My friends at the Milwaukee Journal tell me 'women's lib' is giving them heat, but the newspapers have no obligation to change the headings." He failed to point out that listing such ads under sex-designated headings is contrary to OFCC guidelines for employers, and advised his listeners: "As long as you state in the ad that you are an equal opportunity employer, you are all right."

To make the afternoon complete, William McGowan of the National Alliance of Businessman responded to a serious question regarding the possibilities for job training available to women in poverty with an irrelevant and tasteless joke about a flat-chested cocktail waitress who filed a Title VII complaint. Our esteemed Assistant Attorney General, Jerris Leonard, extended the joke by adding a few choice comments of his own facetiously offering his assistance in handling her case!

Frankly, Mrs. Koontz, I am writing this in such a state of agitation residual to yesterday's experience that I am not certain it is as lucid as it might be! The fact is that I have moved closer in understanding and sympathy to the angry, radicalized militants than I previously dreamed possible--all thanks to the United States' Departments of Labor and Defense, the Assistant Attorney General, and the National Alliance of Businessmen, who claim to be champions of equal opportunity in our nation!

Sincerely yours,

Ms. Burt Boyer

Ms. Boyer's letter is not only striking evidence of, but conveniently encapsulates the lack of commitment from all the agenic agencies responsible for combatting sex discrimination, and enforcing equal opportunity.

II-B

LACK OF AGENCY COMMITMENT

1. Office of Federal Contract Compliance (OFCC)

a. Guidelines on sex discrimination

Although the Executive Order banning sex discrimination by federal contractors was issued in 1967, it took over a year for the OFCC to issue proposed guidelines for enforcement--and another year and a half for severely watered-down guidelines finally to be issued on June 9, 1970.

The most serious change in the guidelines was the elimination of the requirement for affirmative action goals and timetables for women's employment. In many cases the guidelines were so watered down as to be weaker than Order #4, the Equal Pay Act, and the EEOC rulings--for example, the guidelines' definition of bona fide occupational qualification was weaker than the EEOC's. It was only after continued pressure from Congressional representatives mobilized by NOW that the Secretary of Labor agreed that the EEOC definition would apply.

b. Affirmative Action--Goals and Timetables

In the weakened Guidelines, all references to "affirmative action programs" were eliminated. NOW forced a meeting with Secretary of Labor James D. Hodgson to determine if goals and timetables would be applied to women under Order #4. His answer, given in a meeting held on July 25, 1970, was "no." His reason was that the employment problems of women were "different" and must be "handled on a different basis." He said, "We have no intention of applying literally exactly the same approach to women" in Order #4 "which was designed for racial minorities."

c. Secretary of Labor's Statement

The next day Secretary Hodgson issued a statement insisting that the same methods could not be used to enforce sex discrimination rulings as were used against racial or ethnic discrimination. He said:

The primary distinction between the two is the requirement set forth in Order #4 that government contractors analyze their work force and their potential work force recruitment area and where deficiencies in the utilization of minorities exist, that goals and timetables be set to which the contractor's efforts shall be directed to eliminate these deficiencies.

8. (II-B: c-d)

These specific procedural requirements of Order #4 are not totally suitable to sex discrimination...

Accordingly, different criteria must be employed in examining workforce patterns to reveal deficiencies in employment of women than are used in revealing racial deficiencies. Such criteria may well include the availability of qualified women in the employer's own force and the interest level expressed in respective occupations as evidenced by applications for employment in those occupations. It will be necessary to examine whether whether the applicant interest among women for certain occupations might be changed by effective affirmative action programs.

To properly examine these criteria and review suggestions regarding applicable criteria, the Department plans to engage in an immediate series of consultations with interested parties...

The "different basis" on which the Secretary intended to "handle" the employment problems of women was not made clear, but our meeting did clarify the Secretary's position. By refusing full enforcement for women of Order #4's goals and timetables, the Secretary made a policy decision which had no legal basis.

d. Women as a Minority

There is no doubt that women are legally entitled to full enforcement of Executive Order 11246 as amended. The OFCC has specifically defined women as a "minority group" for purposes of affirmative action. On January 17, 1969 when the OFCC published amendments to its Obligations of Federal Contractors and Subcontractors, it added the word "sex" to all places where the previous statement had read "race, color, religion or national origin," and declared that the term "minority group...shall include, where appropriate, female employees and prospective female employees."

Nothing in the Executive Order or in the Obligations of Federal Contractors and Subcontractors or on Order #4 states that women should be afforded separate or different treatment, or authorizes the Secretary of Labor to establish priorities of enforcement. In fact, when this was pointed out to him at the June 25th meeting, the Secretary admitted that this was so.

e. Standards for Determining Availability

According to Order #4, minority availability is determined by: the minority percentage in the recruitment area, minority unemployment, percentage of minorities in the work force, availability of minorities qualified for the particular job category, availability of promotable minorities within the employers' workforce, and existing and possible training opportunities.

There is no acceptable reason for this formula's not being applied to women.

The Secretary of Labor has said that all women do not seek employment. Neither, however, do all men. According to the Bureau of Labor Statistics report entitled A Micro-Model of the Labor Supply issued in 1970, only 80.4% of men between the ages of 16 and 65 were in the 1966 labor force. To offer the excuse that all women do not seek all jobs is nothing but proof of overwhelming discouragement due to discrimination, and the desperate need for affirmative action.

f. The Women's Availability Committee

On July 31, 1970, the Secretary of Labor promised to convene a committee within two weeks to determine how to apply the goals and timetables requirement to women. Nothing was to be heard of that promise for another five months. Finally, not one, but four separate committees, representing industry, labor, women, and human resources groups were appointed. Committee members from both women's and labor groups strongly protested the groundrules under which the committee was organized. The Labor Department decided that committee members should meet only within their own categories and not together. Members of the group also received a questionnaire which began with the loaded question: "Should the interest level of women for particular jobs affect the definition of deficiencies and the establishment of goals and timetables?" Nowhere in Order #4 is there a mention of interest level as a criterion for determining availability.

Among those appointed was NOW's president Aileen Hernandez, who withdrew from participation in protest at the procedures, the rock-bottom consultants' fee, the lack of a plenary session. Ann Scott, also a member of the Committee, pointed out in a letter to OFCC Director John Wilks that "this advisory committee is not only a means of recording people's thinking on availability determination but perhaps even more important, it is an opportunity to learn through the free exchange of viewpoints and information. I see no purpose whatever in having us meet in separate groups; such a course tends rather to heighten differences than to resolve them."

10. (II-B: f-h)

The four groups were convened separately in March and April, 1971. All demanded a plenary session, which has not yet (late July) met. Out of patience with the delay, on May 13 at an Equal Pay Conference in New York, Aileen Hernandez announced that unless the Secretary of Labor issued regulations concerning women under Order #4 by July 31, 1971 (one full year after his announcement), NOW would file a writ of mandamus or other action against him.

g. The Secret Memo

Sometime in the summer of 1970, staff members of the OFCC completed a memorandum to be sent over the signature of OFCC Director John Wilks to all contract compliance officers regarding the administration of the sex discrimination program under the Executive order. It outlined policy and procedures for implementing the Executive Order. This memo was never issued.

The memo makes clear that the OFCC all along had intended to apply Order #4, including goals and timetables, to women. The memo died in the Secretary's office. As a result, the contract compliance agencies are still operating without direction on this question. Some have decided to enforce the order; others are ignoring complaints and refusing to enforce. The Department of Health, Education and Welfare, for example, has responded to complaints against over 200 universities filed by women's groups by instituting compliance reviews and requiring affirmative action programs to include goals and timetables. Contracts have been held up when universities have refused to comply by releasing their personnel records as required under their contracts.

h. Defense Department Actions

The Defense Department has totally refused to enforce the Executive Order against sex discrimination.

After holding up some \$7.7 billion in contracts from the McDonnell-Douglas Corporation of St. Louis, the Defense Department announced that the Pentagon and company officials had reached agreement on goals and quotas for the hiring of Negroes in categories that included professional, supervisory, management and technical positions. The company has 33,000 workers, including 8,500 professional and technical employees, and 6,390 office and clerical workers. There was no mention of women in the affirmative action plan accepted by the Department of Defense.

On June 18, 1970, NOW members attended a meeting held by Defense Department Contract Compliance officers to inform contractors of their obligations under the law. Seymour Maise, Chief of the New York Regional Office of Contract Compliance for the Defense Department, told corporate representatives that Order #4 did not address itself to the "female problem," that the definition of women as a "minority" as specified in the Federal Register had not been "reaffirmed," that companies should look at the utilization of females but they did not have to set goals, and that the exclusion of women from affirmative action programs would not make bids unawardable.

In the past, the Department of Defense had allowed individual compliance officers to suggest the inclusion of women in affirmative action programs, although it was made clear that this was not required for Defense Department approval. Now, however, compliance officers have been specifically ordered not to suggest the inclusion of women in such plans.

This followed a decision to eliminate even information about the utilization of women. On April 1, 1970, the Defense Department's compliance office issued an Equal Opportunity Evaluation Report for staff use which instructed staff to provide: "Information as to the number or percentage of unemployed minorities; the availability in terms of skill levels of minorities and females; the underemployment of minorities and females." It inquired, "Does the Affirmative Action Plan or did the Contract Relations Officer's review reveal underutilization of minorities and females?" A revised form dated May 11, 1970 eliminated all references to female.

NOW has learned that in areas like North Dakota, the Department of Defense is not requiring affirmative action programs from federal contractors at all, on the grounds that there are no minorities in the area which constitute over 2% of the population. Clearly there is no area in the United States where women are less than 2% of the population. This exclusion is in direct violation of the Executive Orders, which require compliance agencies to make contractors determine areas of underutilization whether or not goals and timetables are required.

i. Form A

Form A has been developed by the OFCC to require all Federal contractors to file uniform information for the purpose of keeping a running check on their compliance progress, and would serve the excellent purpose of standardizing requirements among the 15 compliance agencies. The form as proposed asked for information on the numbers, wages, job levels, etc. of women but did not require each minority group to be analyzed by sex. In fact, the form stated that black women could be counted twice, although it did not require companies to pay them double salaries.

12. (II-B: i-j)

NOW pointed out that this would in effect deprive the minority community of salaries: that an employer of 100 could set a 10% goal for blacks and a 10% goal for women and then hire 10 black women and pay out only 10 minority salaries instead of 20. This would obviously work to the disadvantage of minority men, as well as non-minority women. To make the point more strikingly, an employer of 100 might turn in a report indicating that he has increased his minority hiring by 5% by employing one woman, one black, one Roman Catholic, one Spanish surnamed American, and one Italian-born, when in fact he has hired one black Catholic woman named Sanchez who was born in Venice--thus hiring only one minority person while getting credit for five.

This procedure was changed at NOW's request in the form, but as submitted to the Office of Management and Budget, it has other drawbacks. NOW has officially protested that the form does not require that employers estimate the number of promotable women in their workforces, although it does require that information for other minorities.

The National Association of Manufacturers has strongly opposed the use of Form A or any other form like it, and is still trying to keep it from being included in the Federal budget for next year. It is an indication of the level of Federal commitment to equal employment opportunity that six years after the Executive Order was first issued, there is still no standard reporting form for Federal contractors, and no uniform enforcement standards among the agencies.

j. Prompt Investigation of Complaints

Under the Obligations of Federal Contractors and subcontractors issued by the OFCC in May, 1968, procedures for filing and handling individual complaints are defined. (Subpart B, 60-1.21 to 1.24) These regulations require "prompt investigation" of each complaint filed. On May 28, 1970, a memorandum of understanding between the EEOC and the OFCC was issued. It provided that the individual complaints received by the OFCC would be referred to the EEOC for investigation and action, and that the OFCC would thereby be free to handle compliance reviews.

The memorandum requires the EEOC to investigate the complaint within 60 days "where practicable," thus leaving the door open for the EEOC to put all OFCC complaints at the end of its two-year backlog, making the "prompt investigation" required under Executive Order 11246 clearly impossible.

Furthermore, the terms of the memorandum clearly negate all the advantages accorded the complainant by Executive Order 11246. For example, the EEOC will handle complaints according to its own procedures and not according to OFCC's. Complaints will be referred where required by EEOC procedures to the existing State Commissions, a lengthy and unsatisfactory process. More important, under Executive Orders, the burden of proof is on the employer, not on the complainant; under Title VII it is on the complainant.

k. Regulations on Order #4

On July 27, NOW's president and Chairwoman of the Board and other NOW members went to the Department of Labor to ask Secretary Hodgson if the regulations applying Order #4 to women would be published as promised in the Federal Register by July 31, one year from the date he agreed to goals and timetables for women. NOW was refused the five minutes we asked for, and instead we were told that the Undersecretary of Labor would let us know when he returned from vacation.

At NOW's request, a number of members of Congress asked the Secretary for a commitment. Senator Williams, Chairman of the Senate Labor Committee, was particularly helpful with phonecalls and a hand-delivered letter demanding that the Executive Orders be equally enforced for women.

NOW has discovered that while the OFCC had drafted an effective set of regulations out of the recommendations from the four advisory committees, their version was referred to the Solicitor's office where it was gutted. It is yet to be seen which version, if any, will be published.

NOW's position is that the Secretary has no authority to enforce the Executive Orders selectively, and that we will take legal action if regulations are not immediately issued.

1. The Moynihan Effect

The theory, advanced by Daniel Moynihan in his 1966 report entitled the Negro Family, argues that one of the chief causes of the problems faced by blacks has been the "destruction and dissolution" of the family. He charged that a "black matriarchy" arose out of the conditions of slavery and segregation, which destroyed the black male's pride. His solution is that black men must be placed at the heads of their communities and families before discrimination can be combatted successfully.

Although widely discredited, the effect of Moynihan's report is still a widely proliferating theory that the aspirations of all women, black and white, are inimical to the black cause. This theory has had an adverse effect on enforcement of laws and orders against sex discrimination in the many compliance agencies where the staff still subscribes to the Moynihan theory.

For example, recently an unpublished report by a male analyst in the Labor Department's Manpower Administration recommends that the sex provision of Title VII be repealed, that the Federal government be made the employer of last resort for all men with families, and that men be placed in charge of all government programs for the disadvantaged, since "placing these (disadvantaged) younger men under dominant women will only increase their longrun psychological disabilities."

NOW has frequently protested this kind of thinking on the part of government officials, pointing out that unequal enforcement for women undermines the entire concept of both Executive Orders and Title VII, by encouraging employers to discriminate on every other one of the prohibited bases--race, color, religion, national origin--as long as they do so against a woman.

Patricia Roberts Harris, former Dean of Howard Law School, and former U. S. Ambassador to Luxembourg, said in a commemoration Day address at Johns Hopkins University, February, 1971:

Despite assertions to the contrary, black women did not make black men second class citizens. Whites did that. As Price Cobbs and Bill Grier point out in Black Rage, black women cushioned for their children and their man the impact of white brutality and by doing so sacrificed much of their women's right to self-fulfillment. To convert the black woman victim to the villain in the repression of black males is so stupefying in its distortion that I still cannot believe that it is a position adopted widely by the young and by large numbers of black men....Black women have a life experience of equality with men to protect, and it is one to be proud of....It is a model of what life can be like for couples who respect each other's right to be persons.

II B LACK OF AGENCY COMMITMENT (continued)

2. Equal Employment Opportunity Commission (EEOC)

In the seven years since Title VII was passed, the EEOC has compiled a record on combatting sex discrimination so dismal that its negative effects far outweigh the one or two positive items on its record. Lack of enforcement powers can in no way excuse the EEOC from its policy of ignoring sex discrimination in complaints and hearings, or from its own practice of discriminating against women within its own organization.

a. Report of the U. S. Civil Rights Commission

Although not empowered to investigate sex discrimination under the law, in its 1100 page report of December, 1970 entitled the Federal Equal Opportunity Enforcement Effort, the Commission did remark in passing that:

After long delays, the Commission has taken action to protect the rights of women in several areas, including state protective laws, classified advertisements, and bona fide occupational qualifications. Considering that almost a fourth of its complaints have concerned sex discrimination, however, the Commission's resources have not been directed proportionately to this issue.

Also, the Commission's efforts to deal with sex discrimination continue to be on a complaint-oriented basis. Moreover, EEOC employs no women at the supergrade level; and only the Office of Administration and one of the thirteen field offices are directed by females.

b. Report by the Brookings Institution for the Civil Rights Commission, 1961

In 1969, the Brookings Institution issued a report entitled The Role of the Federal Government in Promoting Equal Opportunity in Employment and Training. It stated:

In general, the evidence supports the contention that the Commission (EEOC) has been slow to act on sex discrimination issues. When it does act, it has tended to take positions which are short on specifics, leaving for subsequent cases the precise interpretation of Title VII....

16. (II-B: 2. b)

...in the widely publicized airline stewardess cases, the EEOC took over two years to issue its ruling that sex is a bona fide occupational occupation in no case for the position of flight cabin attendant. Even then it deferred action on age and marital status requirements for female flight cabin attendants.

c. Sexism in EEOC Hiring and Staff Attitudes

On January 4, 1971, NOW president Aileen Hernandez, herself a former EEOC Commissioner, who resigned on the grounds of the EEOC's refusal to do anything on sex discrimination in 1966, wrote to Commission Chairman William Brown III:

...NOW is appalled at the small number of women at the higher grade levels in EEOC and in supervisory positions either in the field offices or at headquarters. In view of this situation, we request a breakdown of EEOC staff--in field offices and headquarters--by race, sex and position, and an account of EEOC's internal affirmative action program to ensure equal opportunity in employment for women.

Further, some time ago NOW urged the Commission to conduct a separate hearing into the question of sex discrimination, as a clear indication of EEOC's commitment to this aspect of its mandate. We have had absolutely no response to our request...

NOW is deeply disturbed by the apparent cavalier attitude of the Commission and its staff toward the matter of sex discrimination. We hereby request a meeting with all the commissioners to discuss what might be done to remedy the situation and to arrive at a precise definition of the Commission's commitment to meeting its full obligation under Title VII.

Of 16 recent appointments in the field to director or deputy director, only one was a woman.

d. EEOC Hearings Ignore Women

In June, 1970, NOW Southern Regional Director Sylvia Roberts testified before the Special Subcommittee on Education chair by Representative Edith Green. She reported on the unconcern shown for women's employment problems shown by the staff and Commissioners and the staff of the EEOC at public hearings held in Houston, Texas, June 2-4, 1970.

When NOW heard that these hearings would be held, a request was made for time to testify, which was granted. Being aware of the absence of clear data on sex discrimination in the EEOC's reports, NOW also asked that the data be reanalysed to outline the existence and extent of sex discrimination in Houston. No affirmative response was ever made to this request. Fortunately, the President of the Houston Chapter of NOW is a highly qualified sociologist who took it upon herself to reanalyse the data and prepare a fourteen page report with eight statistical tables ...plus an index of suggestions to the EEOC....This was the function of the EEOC, and the lack of interest in preparing such a report and leaving it to an unpaid volunteer is most regrettable.

In addition, observing the hearings and reading the press releases of the EEOC disclosed that little or no mention of sex discrimination was made.

The annual public hearings held by the EEOC have similarly ignored the problem of sex discrimination. In the 1968 hearings in New York, the Commissioners scarcely asked a question about the employment of women. In the 1969 hearings in Los Angeles, the Commissioners only investigated race discrimination, and threatened to file suit against the entire motion picture and film industry. The EEOC press release, among numerous statistics, made no mention of sex discrimination, and the out-of-court settlement provided for 20% quotas for blacks and Mexican Americans, but not for women. These quotas were for many job categories where women are rarely found.

On February 18, 1970, then newly appointed EEOC Chairman William Brown III described discrimination in the utility industry in statistical detail, and never mentioned women. On May 19, he released national figures on minority group representation in construction and non-construction unions-- again without having the data analysed by sex.

The report of the President's Task Force on Women's Rights and Responsibilities, entitled A Matter of Simple Justice, notes that in the EEOC's 1968 three volume report Job Patterns for Minorities and Women one cannot find

...a table or narrative statement that compares the employment situation for white men, Negro men, white women, Negro women. The underlying assumption of this appears to be that sex differences in industry and occupational distribution of white men and white women are insignificant or perhaps that these differences do not result from discrimination.

18. (II-B: 2. d)

f. EEOC Literature Encourages Sex Discrimination

At the end of 1970, the EEOC issued a booklet entitled Equal Job Opportunity: A National Goal, addressed to employers to aid them in establishing and implementing a plan for affirmative action.

Not only does this booklet generally exclude any reference to women (there is only one reference to sex discrimination as a prohibited basis), but it actually violates the very law it is supposed to enforce by directing employers to "appoint a man" to conduct their equal opportunity programs.

Even more incredible, in its merit promotion program announcements it advertises for positions in the following terms:

Regional Director, GS-301-16:

\$28,129 to \$35,633 per annum....Incumbent is responsible, within his regional area, for the administration of Title VII....His function requires extensive personal contacts...
January 27, 1971

Investigations Specialist, GS-301-13 (2 positions)

\$17,761 to \$23,089 per annum....He should have the ability to communicate...
March 29, 1971

District Director, GS-301-14 (11 positions)

\$20,815 to \$27,061 per annum....The incumbent is responsible through the efforts of his professional staff...
January 27, 1971

Secretary (typing), GS-318-5

\$6,938 to \$9,017 per annum....serves as secretary to the Chief of the Division....as his personal secretary...
May 4, 1971

Clerk-Stenographer, GS-312-4

\$5,853 to \$7,608 p. a....Takes and transcribes memoranda, letters...dictated to her by professionals...
October 29, 1970

Secretary (stenography), GS-318-5

\$6,548 to \$8,510 p.a....keeps her supervisor's calendar;...and acts as liaison between the Director and his subordinates.
October 29, 1970

This is particularly striking in light of Commissioner Brown's testimony before the House Special Subcommittee on Education, July 1, 1970, in which he stated:

We have filed Commissioner's charges whenever we find that a large employer has violated the guidelines set down by our Commission, and advertises according to sex. He may advertise just for a male, and we have filed charges against him on our own, because many times other people don't bring this to our attention....

Apparently the EEOC does not see fit to follow its own guidelines.

g. EEOC and AT&T

Recently EEOC filed a demurrer to AT&T's request for a rate hike on the grounds that the AT&T discriminates. The Brief did include as a secondary focus the fact of sex discrimination in AT&T. EEOC noted that while AT&T employs 1% of the nation's workforce, it is the object of 7% of the complaints filed with the EEOC. In the brief, however, the EEOC did not include a breakdown of those complaints by sex.

Further, NOW's Southern Regional Director, attorney Sylvia Roberts, in acting for the plaintiff in landmark case Weeks v. Southern Bell, found that the EEOC virtually ignored the case, and did not process a harassment charge filed by plaintiff against Southern Bell.

h. EEOC referrals to the Department of Justice

Since its inception, EEOC has referred over 50 cases which the Department of Justice has chosen to pursue. Of those, only one has been on the basis of sex discrimination--that brought against Libby-Owens-Ford Glass in late 1970. The case was not taken to court decision, but was settled by a consent decree.

20. (II-B: 3)

II-B LACK OF AGENCY COMMITMENT (continued)

3. Wage and Hour Division, Department of Labor

Enforcement of the Equal Pay Act of 1963 is a pleasant exception to the pattern described for other agencies. In administering the Fair Labor Standards Act since 1938, the Wage and Hour Division has built up a network of nearly 1000 experienced compliance officers working out of nine regional and nearly ninety local offices. Since 1964, close to 150 complaints of unequal pay have been filed by the Department of Labor, and through court decision or conciliation, nearly \$40 million in illegally withheld back wages has been recovered for some 70,000 women, and a few men.

In the six months previous to February, 1970, equal pay complaints increased by one third. Our understanding is that cases are investigated promptly; there is no waiting period to compare with that which exists in other agencies.

In contrast to EEOC which often assigns compliance personnel to cases without even sending them through their own inadequate training program, the Wage and Hour Division takes two years to train investigators. They have not yet lost a case in appellate court, arguing effective investigation and carefully prepared cases.

Enforcement of the Equal Pay Act proves that with agency commitment, good administrative direction, adequate and seriously trained staff, and a program of public education, outstanding results can be achieved in the field of civil rights. Therefore, the excuses so often heard from other agencies about public assistance and the apathy of women are shown to be nothing but smokescreens to hide their own failures.

At present no mechanism exists by which the successful enforcement program under the Equal Pay Act can be compared to the unsuccessful ones under the EEOC and the OFCC. Much could be learned about the failures of the last two through such a comparison.

II-B LACK OF AGENCY COMMITMENT (continued)

4. The Federal Government as an Equal Opportunity Employer

On August 8, 1969, President Nixon signed Executive Order 11478 prescribing affirmative action programs for women in each Federal department and agency. Testifying before the House special Subcommittee on Education (June 16, 1970), Daisy B. Fields, President of FEW (Federally Employed Women), noted that many agencies have not complied with the Civil Service requirement (FPM Letter No. 713-15) for a Federal Women's Program Coordinator, or even established a Federal women's Program at all.

In some cases the Federal Women's program is an out and out insult. As late as May, 1971, in 25 of 26 regional offices of the General Services Administration, the Federal Women's Program Coordinators were men.

While the Civil Service Commission is requiring federal agencies to develop affirmative action programs for their own employment, it is not requiring that they include goals and timetables for women. Hence equal opportunity for women in federal employment remains at the whim of the agency.

In October 1968, the Civil Service Commission issued a "study of Employment of Women in the Federal Government." According to its figures, in white collar jobs women represented 34% of a federal workforce of nearly 2 millions, distributed through the grades as follows:

Grades GS-1 through GS-6	78.7%
Grades GS-7 through GS 12	19.9%
Grades GS-13 and up	1.0%
Grades 16 and up	.02%

The study also pointed out that at GS-16 and above, women dropped from 164 in 1967 to 131 in 1968.

In 1969, Republican Congresswoman Florence Dwyer of New Jersey, along with three other Republican Congresswomen, sent the following memo to President Nixon:

22. (II-B: 4)

This administration has done absolutely nothing of significance in the field of women's rights....Not a single important policy decision or legislative recommendation advancing women's rights has been made. Not only have fewer women been appointed to responsible positions than in past administrations, but the number of existing women office-holders replaced by men in the present administration has reduced the net record to minus one....Responsible Administration officials have not only avoided the issue, but several, including White House staff members, are known to be positively anti-women....

Of the approximately 540 top administration appointments ...less than 15 have been to women....In the 12 Departments this Administration has appointed 9 women to positions at GS-15 and above as compared to at least 27 in the Johnson Administration; and in independent agencies and Commissions, 3 women as compared to 73 in the Johnson Administration....No women are involved in the Administration's appointment process.

III. HISTORY OF NOW'S EFFORTS TO SECURE ENFORCEMENT

A. Office of Federal Contract Compliance

1. After it was organized in 1966, N.O.W. pressed for amendment of Order 11246 to include sex.
2. August, 1969:
N.O.W. testified at OFCC hearings on proposed guidelines on sex discrimination.
3. N.O.W. pressed for the release of the proposed sex discrimination guidelines, issued Jan. 17, 1969.
4. June 1970
When the guidelines were released June, 1970, N.O.W. protested their weakened form and succeeded in getting the EEOC's definition of bona fide occupational qualification to apply. N.O.W. also protested the elimination of a requirement for goals and timetables in affirmative action programs for women. N.O.W. launched a campaign to bring Congressional pressure on the Labor Department to secure goals and timetables. Support came from Sen. Margaret Chase Smith, Rep. Edith Green, Rep. Patsy Mink, Rep. Florence Dwyer, Sen. Jacob Javits, Sen. Marlow Cook, Sen. Charles Goodell, Rep. Donald Frazier, Rep. Abner Mikva, Rep. Edward Koch and others.
5. July 25, 1970
N.O.W. forced a meeting with Secretary of Labor Hodgson to demand that goals and timetables be applied to women.
6. July 30, 1970
N.O.W. conducted demonstrations at the 14-city National Association of Manufacturers teleconference on equal enforcement to protest the elimination of goals and timetables.
7. July 31, 1970
The next day, Secy. Hodgson issued a statement declaring that goals and timetables would apply to women but that women's availability could not be determined by the methods used for other minorities. He promised to set up a committee to work out procedures for determining availability.
8. October 1970
N.O.W. made recommendations for the members of the Committee and pressed for months for, first, appointment of the Committee, and then for meetings. It took months to get the appointments made and the meeting still had not taken place.

24. (III-A)

9. May, 1970

N.O.W.-Boston filed a complaint against Harvard University charging discrimination in the hiring of faculty.

10. June 20, 1970

N.O.W. filed a complaint against the State University of New York, the largest university in the world. Compliance review is now under way.

11. N.O.W. protested the absence of women in key jobs within the OFCC itself. It demanded that "The top staffs of compliance agencies and all compliance teams must include women in numbers equal to their representation in the population. The OFCC is opening 11 Agency Technical Compliance Offices around the country. Six of the Directors, Deputy-Directors and Community Relations officers of those offices should be women. The Defense Department's Office of Contract Compliance has only one woman among 110 compliance officers and the other departments show similar discrimination. At least half the compliance officers in the country should be women."

12. May 14, 1970

N.O.W. published the first model affirmative action program for universities.

13. May 2, 1970

N.O.W. established a Federal Compliance Committee to press for enforcement of federal equal opportunity requirements for women. The Committee was specifically charged to develop a program and procedures for filing complaints on sex discrimination with OFCC and EEOC.

14. March 20-22, 1970, the N.O.W. national conference passed resolutions calling for N.O.W. officers to develop a program to assist women in filing complaints on sex discrimination and called for N.O.W. action "to insure that enforcement agencies take affirmative action to carry out the law."

15. June 25, 1970

N.O.W. filed a complaint against 1300 major U.S. corporations charging that federal contractors in the list had not filed affirmative action programs with goals and timetables for women's employment. To this date, July 1971, N.O.W. has never even received a letter of acknowledgement or any response to that complaint.

26. (III-A)

23. July 27, 1971:

NOW went to the Department of Labor to demand immediate issuance of regulations applying Order #4 to women.

24. May 10, 1971:

NOW filed a class action against all public school systems in the country that are Federal contractors on the grounds of discrimination against women teachers in salaries, promotions, maternity policies, opportunities for supplementals, and fringe benefits.

25. August, 1971

NOW issued a model affirmative action plan to be sold directly to industry, or by chapters for a percentage. NOW's AAP would put industry in compliance with all government agencies on all bases.

III.

B. Equal Employment Opportunity Commission

1. An impetus for the organization of N.O.W. was the EEOC's failure to enforce the law against sex discrimination with any degree of seriousness or commitment. At the June 1966 meeting of commissions on the status of women in Washington, women raised the question of EEOC's lack of concern about women's employment and sought a ruling against sex-segregated want ads. The officials in charge of the meeting prevented a resolution of the issue from being presented. The result was an informal meeting at which some of the conference participants resolved to form an organization that would take action on such an issue. Plans were made to hold a convention the following October--the first convention of the National Organization for Women.
2. N.O.W. has represented women in various causes filed under Title VII, including workers in *Bowe v. Colgate-Palmolive*, where the Circuit Court ruled against the use of weight-lifting restrictions to prevent women from competing for jobs.
3. N.O.W. filed an amicus brief with the Supreme Court in the case of *Phillips v. Martin-Marietta*.
4. N.O.W. represented Lorena Weeks in a case filed against Southern Bell Telephone. In spite of the fact that the Circuit Court ruled against the company's defense which was based first on weight-lifting restrictions and then on the need to work late hours, the EEOC failed to act when Southern Bell did not comply with the court decision. In fact, the EEOC took no action even after Ms. Weeks was "punished" for her temerity in filing the complaint by being denied overtime in her original job which she continued to hold. On July 3, 1971, Ms. Weeks won her case.
5. N.O.W. protested the EEOC's lack of attention to sex discrimination in hearings held in Houston in June, 1970. N.O.W. reanalysed the EEOC staff data so that they would show the status of women's employment. N.O.W. called on the EEOC to contract new research to focus specifically on sex discrimination based on the most recent data EEOC has to parallel the extensive research done by EEOC staff on racial and ethnic discrimination. It called on the EEOC to concern itself with investigations into industries employing high percentages of the female workforce.

28. (III-B)

6. N.O.W. protested the Administration's decision not to reappoint EEOC Commissioner Elizabeth Kuch and successfully protested the nomination of Irene Walczak, a country-club suburbanite, organizer of ladies auxiliaries, heavy contributor to the Republic Party who has never held a paying job in her life.
7. N.O.W. has continuously asked for EEOC public hearings on sex discrimination as well as serious inclusion of questions on sex discrimination in general hearings.
8. In November, 1970, N.O.W. protested remarks by EEOC Executive Director Joseph Fagin who had publicly told employers they need not comply with the EEOC's ruling against sex-segregated ads.
9. N.O.W. has requested a meeting with the full Commission to discuss our criticisms of the way the EEOC is enforcing Title 7 for women.
10. In January, 1971, N.O.W. joined the EEOC complaint against the American Telephone and Telegraph filed with the Federal Communications Commission. N.O.W. wondered why the EEOC had not taken steps to use its own powers, i.e., the issuance of a Commissioner complaint, to combat discrimination within AT&T.
11. In June, 1970, N.O.W. called for the appointment of women to half the regional directorships of the EEOC and said that half the members of EEOC compliance teams should be women. N.O.W. also called for hearings into sex discrimination in public and private employment in Washington D.C. It said that "In its five years of operation, the EEOC has provided assistance funding to only one local fair employment commission investigating sex discrimination, and that one is more the result of an activist female human rights official than the urgings or interest of the Federal agency. The EEOC should insist that all grants for local investigations and enforcement programs include women and there should be a substantial increase in grants dealing with discrimination where sex alone is a factor.
12. N.O.W. repeated its call for Washington hearings in November, 1970.

C. Other Agencies

1. Federal Communications Commission (FCC)

NOW discovered that in September, 1970, FCC had issued a ruling calling for affirmative action hiring programs by broadcast licensees. This ruling applied to racial and ethnic minorities, but not to women, even though women were included in the groups against which discrimination was banned. In effect, FCC had decided not to enforce its own order where women were concerned.

NOW officers and members throughout the country sent letters of protest to FCC Commissioner Dean Burch protesting the exclusion of women from broadcasters' affirmative action requirements, and marshalled congressional support.

In January, 1971, NOW filed a legal petition with the FCC asking that its regulations be changed to include women. NOW's petition has been supported by over 30 other organizations, including NAACP, ACLU, the Mexican American Legal Defense Fund, the United Church of Christ, the EEOC, and others.

In July, the FCC issued an amended order in the Federal Register for thirty days to comment.

2. The Department of Justice:

On July 28, NOW received a letter from the acting Assistant Attorney General for Civil Rights, David Norman, asking NOW to provide the Department with materials leading to class actions on sex discrimination under Title VII. The letter came as a result of a visit from Judy Lonnquist and Ann Scott asking the Department of Justice to change their policy on sex discrimination cases, under which they pursued sex discrimination cases only if they were referred from the EEOC.

3. The Federal Aviation Administration (FAA)

When Congress passed a bill authorizing a raise in air fares to provide sky marshalls to prevent hijacking, FAA put out job specifications listing the job as for men only. NOW protested, FAA changed their regulations, and four women were included in the first graduating class of sky marshalls.

30. (III-C)

4. Wage and Hour Division, Department of Labor

The Wage and Hour Division enforces the Equal Pay Act of 1963 very effectively. NOW has cooperated with the agency in setting up meetings around the country with industry, compliance personnel, and women's groups to publicize the existence and requirements of the Equal Pay Act and to encourage the filing of complaints.

NOW has testified on the extension of the Equal Pay Act to administrative, executive and professional workers before both the House and Senate labor committees.

5. The Navy Civilian Employment Program

In response to pressure from NOW, the Navy has established goals and timetables for appointing women to high level positions. This makes the Navy's standards consistent with those of the Air Force.

IV. NOW PROGRAM TO ACHIEVE EQUAL OPPORTUNITY ENFORCEMENT

A. Legislation

NOW is working for passage of legislation affecting enforcement which will:

1. extend the jurisdiction of the U. S. Civil Rights Commission to include sex discrimination
Omnibus Post-Secondary Education Act (Edith Green)
Women's Equality Act of 1971 (Abner Mikva; Birch Bayh)
2. Give Cease and Desist powers to the EEOC
Equal Employment Opportunity Enforcement Act
3. Extend Coverage of the EEOC to eliminate the exemptions of teachers, state and local government employees, federal employees, employees of small businesses
Equal Employment Opportunity Enforcement Act
4. Extend the Equal Pay Act to eliminate exemptions of administrative, executive, professional employees and teachers
Fair Labor Standards Amendments Act
Omnibus Post-Secondary Education Act
5. Prevent the transfer of OFCC to EEOC
Equal Employment Opportunities Enforcement Act
6. Increase appropriations for enforcement agencies.
7. Amend all public Works legislation to prohibit sex discrimination
8. Amend all education bills to prohibit sex discrimination in education

B. Enforcement: OFCC

1. Enforcement of Order #4 for women, including goals and timetables, exactly as it is enforced on the other bases.
2. Sex Discrimination Guidelines: OFCC must strengthen the Guidelines as originally proposed.
3. State and Local Government Employees: OFCC must amend its regulations to require that state and local government employees holding federal contracts file and maintain affirmative action programs, including goals and timetables for women.
4. Form A: Form A as amended by NOW must be cleared by the Office of Budget and Management and in the next federal budget.
5. Issuance of Suppressed Summer 1970 Memorandum, re administration of sex discrimination programs
6. Uniform standards of enforcement: All compliance agencies must be instructed to enforce sex discrimination programs equally for women, and equally among each other
- 7 7. Business and Industry Anti-Discrimination Kit: This kit, which includes a model for filing complaints on pattern and practice under executive orders, is available to all NOW chapters, and to the public through NOW's national office.
8. Academic Anti-Discrimination Kit: This kit, with a model affirmative action program especially designed for universities, is available through NOW's national office, and is in use throughout the country.
9. NOW's Model Affirmative Action Program: available to industry through NOW, this model program will put industry into compliance with all agencies' requirements. It can be sold through NOW chapters, with a percentage of the price to go to the chapter.

C. Enforcement: EEOC

1. Hearings: NOW will continue to demand that the EEOC conduct public hearings specifically on sex discrimination.
2. Meeting with Commissioners: NOW has continually asked to meet with all the EEOC Commissioners for discussion of how all their programs can be improved.
3. Individual Complaints: We seek clarification of how EEOC will handle complaints from OFCC under the memorandum of understanding, especially on using OFCC sanctions.
4. Employment Profile: NOW demands that the EEOC make public its own affirmative action program including its own employment profile analyzed for underutilization of women at all grades in Washington and the field, its program for hiring and upgrading women, an analysis of its implementation for effectiveness, its goals and timetables, and a progress report.
5. Enforcement Record: NOW demands an analysis and documentation of EEOC's enforcement record (i. e. numbers of complaints received, processed, rejected, successfully concluded, referred to states, etc.)
6. NOW demands EEOC adopt NOW's proposed model of questions on sex discrimination for all hearings it holds.
7. NOW calls on EEOC to concern itself with industries employing high percentages of the female workforce and to question practices regarding all aspects of employment, particularly those dealing with promotion, and sex segregation of jobs.
8. EEOC must immediately contract for new research to focus specifically on sex discrimination based on its most recent data, to parallel its extensive research on racial and ethnic discrimination.
9. EEOC must issue an immediate directive to all compliance personnel stressing the importance of investigating sex discrimination; it must institute training programs in all regional offices in cooperation with local women's rights organizations like NOW to educate compliance personnel in the extent and nature of sex discrimination.
10. NOW demands immediate dismissal of all compliance personnel who refuse to enforce Title VII on sex or who publicly indicate their lack of concern about sex discrimination.

D. Survey of all federal enforcement

Apart from or in conjunction with the hearings proposed below, NOW will conduct a survey of equal employment opportunity activities of all 15 agencies under the OFCC, of the independent agencies, of the EEOC and the Department of Justice, and will ask that they provide NOW with a report on both their own in-house affirmative action programs, the extent to which they ban sex discrimination in their own public regulations and procedures, routines and forms; their allocations of budget, resources, and personnel to sex discrimination in relation to their total budget. We shall also ask for their enforcement records. We shall seek for a commitment for consultation with women's groups whenever agencies propose establishing policies or changes that would effect the enforcement of equal opportunity for women.

We shall aim to keep this survey updated on a regular basis, in order to provide a continuous accounting to the American public on what their government is doing to ensure equal opportunity for women.

E. Hearings

NOW is requesting the House Government Operations Committee to conduct hearings into the enforcement programs of all government agencies entrusted with ensuring equal opportunity for women.

This entire report indicates the urgent need for immediate government action. The Executive Branch has failed to carry out its responsibilities to ensure equal opportunity to women. NOW therefore appeals to the Congress to conduct a full investigation of federal enforcement for women, and to make the results known to the public.