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Report to the Chair, Subcommittee on Energy, Committee on Science, House of Representatives

February 2005

EQUAL EMPLOYMENT OPPORTUNITY

Information on Personnel Actions, Employee Concerns, and Oversight at Six DOE Laboratories

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GAO-05-190

February 2005

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Highlights

Highlights of GAO-05-190, a report to the Chair, Subcommittee on Energy, Committee on Science, House of Representatives

EQUAL EMPLOYMENT OPPORTUNITY

Information on Personnel Actions, Employee Concerns, and Oversight at Six DOE Laboratories

Why GAO Did This Study

In April 2002, GAO identified the need to strengthen equal employment opportunity (EEO) oversight at three Department of Energy (DOE) national weapons laboratories and recommended that DOE and the Department of Labor's (DOL) Office of Federal Contract Compliance Programs (OFCCP) collaborate to ensure the laboratories complied with EEO requirements.

GAO was subsequently asked to examine six other DOE laboratories and determine (1) whether differences exist for managerial and professional women and minorities compared with men and Whites in salaries, merit pay increases, separation patterns, and promotion rates; (2) what EEO concerns laboratory women and minorities have raised; and (3) what DOE and OFCCP have done to implement GAO's earlier recommendation.

What GAO Recommends

GAO recommends that OFCCP review the statistical differences identified at the laboratories for practical significance and that the Secretaries of Labor and of Energy work together to define the scope of DOE's oversight responsibility for diversity. DOE and DOL agreed to continue working together to resolve EEO oversight issues.

www.gao.gov/cgi-bin/getrpt?GAO-05-190.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robin Nazzaro, (202) 512-3841, nazzaror@gao.gov.

What GAO Found

For fiscal years 2001 through mid-2004, GAO found some statistically significant differences in salaries, merit pay increases, and separation patterns for managerial and professional women and minorities when compared with men and Whites, and differences in promotion rates when compared with White men. These differences remained despite holding constant factors such as age, education, and occupational category.

- Women were paid 2 to 4 percent less than men at five of the six laboratories, while minorities were paid about 2 percent less than Whites at one laboratory.
- Merit pay increases were comparable for all groups at three of the six laboratories. At the other three laboratories, merit pay increases were higher for women and minorities at one, higher for women at another, and lower for minorities at the third.
- Separation patterns for women and minorities were generally comparable to men and Whites. However, at one laboratory, women were more likely to leave than men, and at another laboratory, minorities were more likely to leave than Whites.
- At one laboratory, selected minority groups were promoted at a rate less than 80 percent of the rate for White men (a "rule of thumb" used by the Equal Employment Opportunity Commission (EEOC) and OFCCP).

Statistically significant differences do not prove or disprove discrimination; rather, they provide information at an aggregate level and may indicate a need for further investigation into their practical significance.

Concerns of women and minority staff at the laboratories focused primarily on underrepresentation, the lack of career development opportunities, and the need for an improved laboratory work environment. Complaints investigated or resolved within the laboratories varied among the laboratories and included issues such as sexual harassment and a hostile work environment. Complaints filed with outside agencies such as EEOC most often cited concerns with pay and terminations. The highest number of external complaints filed dealt with sex or race matters.

As a result of GAO's April 2002 recommendation, OFCCP and DOE staff met to discuss the possible creation of a more formal relationship through a memorandum of understanding. While reviewing OFCCP's draft memorandum, the Department of Labor raised questions about DOE's authority and responsibility for EEO matters at the laboratories, and as a result, OFCCP has not sent the draft memorandum to DOE for coordination. OFCCP maintains that Executive Order 11246, as amended, made DOL solely responsible for enforcing federal contractors' compliance with EEO requirements, and this authority has been delegated to OFCCP by DOL. DOE officials agree, but maintain that DOE's requirement for its contractors to promote diversity through diversity plans is independent from OFCCP's jurisdiction. Accordingly, GAO believes that the departments of Labor and of Energy need to clarify and reach agreement about DOE's role concerning its contractors' diversity activities.

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Abbreviations

DEAR	Department of Energy Acquisition Regulation
DOE	Department of Energy
DOL	Department of Labor
EEO	equal employment opportunity
EEO-1	Employer Information Report
EEOC	Equal Employment Opportunity Commission
FAR	Federal Acquisition Regulation
GAO	Government Accountability Office
OFCCP	Office of Federal Contract Compliance Programs

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United States Government Accountability Office
Washington, D.C. 20548

February 18, 2005

The Honorable Judy Biggert
Chair, Subcommittee on Energy
Committee on Science
House of Representatives

Dear Madam Chair:

The Department of Energy (DOE) is the largest civilian contracting agency in the federal government, with about 90 percent of its annual budget spent on contracts. As part of its contract costs, DOE can reimburse its contractors for litigation costs associated with cases brought against them.[1] Since fiscal year 1998, DOE has approved nearly $57 million for reimbursement to its contractors for equal employment opportunity (EEO) litigation costs.[2] About $10 million of the $57 million is attributable to six of DOE's multiprogram laboratories, and pending lawsuits could increase this amount substantially.[3,4,5] These six laboratories—Argonne, Brookhaven, Lawrence Berkeley, Oak Ridge, and Pacific Northwest National Laboratories,

[1]GAO, *Department of Energy: Reimbursement of Contractor Litigation Costs*, GAO-04-148R (Washington, D.C.: Nov. 26, 2003).

[2]This figure includes the costs of outside counsel and resulting judgments and settlements, including $31 million related to one class action case at Lawrence Livermore National Laboratory settled in fiscal year 2004. It does not include costs for confidential settlements. We determined that the financial data provided by DOE were sufficiently reliable for our purposes.

[3]DOE has nine laboratories that perform research for more than one DOE program office. In general, these multiprogram laboratories are overseen by the DOE program sponsoring the largest share of the work. Five of the laboratories are overseen by DOE's Office of Science—Argonne, Brookhaven, Lawrence Berkeley, Oak Ridge, and Pacific Northwest National Laboratories. The Idaho National Laboratory created on February 1, 2005, from the Argonne National Laboratory West site and the Idaho National Engineering and Environmental Laboratory, is overseen by DOE's Office of Nuclear Energy, Science, and Technology. Los Alamos, Sandia, and Lawrence Livermore National Laboratories are overseen by the National Nuclear Security Administration.

[4]Information presented in this report reflects the circumstances of Argonne National Laboratory and the Idaho National Engineering and Environmental Laboratory at the time of our audit work prior to February 1, 2005.

[5]About a third of the $10 million is attributable to one class action case involving more than 6,000 current and former employees at Lawrence Berkeley National Laboratory. The main issues in the case were privacy violations related to medical exams and that the exams were predicated upon race and sex without reasonable justification.

and Idaho National Engineering and Environmental Laboratory—are managed and operated for DOE by contractors that perform basic scientific research and environmental remediation. These laboratories employ about 21,000 staff, of which approximately 66 percent are managers and professionals.[6] Both former Secretaries Abraham and Richardson issued policies calling for all DOE managers, including contractors, to foster a culture that embraces diversity and to ensure that all employees have equal opportunity with respect to hiring, promotions, and professional development.

Under Title VII of the Civil Rights Act of 1964 (Title VII), as amended, employers cannot discriminate against their employees or job applicants on the basis of race, color, religion, sex, or national origin. The Equal Employment Opportunity Commission (EEOC) has primary responsibility for enforcing compliance with the act for the U.S. workforce.

Executive Order 11246, as amended, which applies to federal contractors, such as those that manage and operate many of DOE's laboratories, prohibits the same type of discrimination as prohibited by Title VII, and also requires that employers take affirmative action to ensure that employees and job applicants are treated fairly without regard to race, color, religion, sex, or national origin. The Department of Labor enforces the executive order and has assigned this responsibility to its Office of Federal Contract Compliance Programs (OFCCP). OFCCP investigates complaints of employment discrimination, conducts compliance evaluations, and takes administrative and enforcement actions when necessary. Under an agreement between EEOC and OFCCP, EEOC generally investigates individual complaints of discrimination against federal contractors, while OFCCP generally investigates discrimination

[6]The nine major job categories, as defined by EEOC, are officials and managers, such as executives; professionals, such as engineers and scientists; technicians; sales workers; office and clerical; craft workers; operatives, such as workers who operate machines and other equipment; laborers; and service workers, such as guards and custodians. For reporting purposes, we combined officials and managers and professionals into one category—managers and professionals.

complaints filed against federal contractors involving groups of people or patterns of discrimination.[7]

Under the executive order, DOE is responsible for ensuring that its contracts contain the EEO provisions OFCCP requires, for cooperating with OFCCP, and for providing information and assistance as needed. In addition, the Federal Acquisition Regulation (FAR) requires DOE to ensure that it carries out the requirements of the subpart of the FAR concerning EEO and that it cooperates with and assists OFCCP in fulfilling that office's responsibilities.[8] The primary responsibility for complying with EEO requirements rests with the laboratory managers. In addition to implementing its responsibilities concerning EEO, DOE has a policy to promote diversity in its contractors' workforce.[9] The DOE Acquisition Regulation (DEAR), which supplements the FAR, requires that management and operating contracts contain a clause requiring contractors to prepare diversity plans. DOE's policy in pursuit of diversity is also reflected in its contracting officers' guidance.

In an April 2002 report,[10] GAO identified the need to strengthen EEO oversight at three of DOE's nine multiprogram laboratories—Los Alamos, Sandia, and Lawrence Livermore National Laboratories----and recommended that DOE and OFCCP work more collaboratively to ensure the laboratories' compliance with EEO.[11]

[7]In addition to investigating individual complaints, an EEOC commissioner can file a charge, known as a Commissioner Charge, against an employer or other respondent on the basis of information obtained by EEOC that indicates discrimination may have occurred. From fiscal year 2001 to mid-2004, EEOC had not filed any Commissioner Charges against any of the laboratories. OFCCP did not receive any complaints against the laboratories.

[8]48 C.F.R. § 22.803(c).

[9]Whereas equal employment opportunity is a legal prohibition against discrimination on the basis of certain specified characteristics, diversity is a broader concept that promotes the inclusion of a wide variety of individuals in a workforce.

[10]GAO, *DOE Weapons Laboratories: Actions Needed to Strengthen EEO Oversight*, GAO-02-391 (Washington, D.C.: Apr. 22, 2002).

[11]Los Alamos, Sandia, and Lawrence Livermore are DOE's three major weapons laboratories.

As agreed with your office, this report examines the status of women and minorities at DOE's other six multiprogram laboratories. Specifically, for fiscal years 2001 through mid-2004, we examined (1) whether statistically significant differences exist between women and minorities when compared with men and Whites in their salaries, the amount of their merit pay increases, and their separation patterns, and whether there were substantial differences in the promotion rates of groupings of laboratory staff by race/ethnicity and sex when compared with White men;[12] (2) what EEO concerns women and minorities raised at these laboratories; and (3) what actions DOE and OFCCP have taken to implement GAO's recommendation to work collaboratively. We did not draw conclusions about whether the laboratories have or have not discriminated against any employee or group of employees. Our analysis of differences in salaries, merit pay increases, separations, and promotions focuses on managers and professionals, while our review of employee concerns includes all laboratory staff.

To determine whether there were differences in salaries, merit pay increases, and separation patterns for women and minorities when compared with men and Whites, and in promotion rates of groupings of laboratory staff by race/ethnicity and sex when compared with White men, we used data from each laboratory's personnel database for fiscal years 2001 through mid-2004. For our analyses of statistically significant differences in salaries, merit pay increases, and separations, we developed laboratory-specific regression models. By statistically significant differences, we mean that we are 95 percent confident that these differences are too large to have been produced by chance or random fluctuations and that they reflect real differences in the populations being compared. Our analyses of statistically significant differences are not designed to prove or disprove discrimination in a court of law like analyses conducted by OFCCP or EEOC, nor do they establish whether the differences are of practical significance that would require corrective action by the laboratories. Rather, our analyses use a standard method designed to provide information at an aggregate level about differences in personnel actions, such as salaries, merit pay increases, and separation patterns, for women and minorities at the laboratories that may need further investigation. Because the laboratories have somewhat different

[12]EEOC and OFCCP define minorities as Asian or Pacific Islander (Asian); Black, not of Hispanic origin (Black); Hispanic; and American Indian or Alaskan Native (American Indian). EEOC defines White as White, not of Hispanic origin.

personnel systems and practices, our analyses of salaries, merit pay increases, and separation patterns included variables specific to each laboratory, as well as those common to all six. For example, we included laboratory-specific controls for organizational structure and occupational classification systems. Additionally, we included controls for age; tenure at the laboratory or within grade; employment status (postdoctoral, part-time and temporary status); management status; citizenship; and education level where data were available. Consequently our analyses of statistically significant differences are not exhaustive, nor do they prove or disprove discrimination. Rather they are designed to identify issues or problems that may need to be investigated further.

To determine whether promotion rates of groupings of laboratory staff by race/ethnicity and sex were substantially different from White men, we applied the 80 percent rule set out in the federal government's Uniform Guidelines on Employee Selection Procedures.[13] We determined that the laboratories' personnel data were sufficiently reliable for our purposes.

To determine the EEO concerns of women and minorities at the laboratories, we interviewed representatives from employee groups for women and minorities at the laboratories and reviewed recent DOE and laboratory surveys and studies. We also collected data from each laboratory on complaints filed and investigated within the laboratory (internal complaints). Finally, we examined complaints filed with organizations outside of the laboratory, such as EEOC, OFCCP, or a state and local fair employment practices agency (external complaints). We did not attempt to prove or disprove the validity of these concerns, nor did we assess the laboratories' efforts to address them. We determined that the data we collected were sufficiently reliable for our purposes.

To determine the actions DOE and OFCCP have taken to implement our 2002 recommendation, we met with DOE and OFCCP officials responsible for implementing our recommendation and for EEO oversight at DOE's laboratories. We also examined the roles and responsibilities of DOE

[13]The 80 percent rule is a "rule of thumb" under which EEOC, OFCCP, and other agencies will generally consider a selection rate for any race, sex, or ethnic group that is less than 80 percent of the selection rate for the group with the highest selection rate as a substantially different rate of selection. This rule of thumb is a guideline, not a regulation, and is a practical means of keeping the agencies' attention on serious discrepancies in rates of hiring, promotion, and other selection decisions, and on the selection procedures they use.

headquarters and field offices, OFCCP, EEOC, and the contractors in ensuring that the laboratories comply with EEO requirements.

We conducted our review from February 2004 through December 2004 in accordance with generally accepted government auditing standards. Appendix I contains our scope and methodology.

Results in Brief

For fiscal years 2001 through mid-2004, we found some statistically significant differences in salaries, merit pay increases, and separation patterns for managerial and professional women and minorities when compared with men and Whites, and one instance where the promotion rates for selected minority groups were substantially lower than those of White men. Statistically significant differences do not prove or disprove discrimination; rather, they provide information at an aggregate level and may indicate a need for further investigation. Specifically, we found the following:

- *Salaries.* Women were paid between 2 and 4 percent less than men at five of the six laboratories we examined. Furthermore, at one of the laboratories, minorities were paid about 2 percent less than Whites.

- *Merit pay.* Increases were comparable for all groups at three of the six laboratories. At one laboratory, increases were higher for women and minorities. At the remaining two laboratories, increases for women were higher at one, while increases for minorities were lower at the other.

- *Separations.* Women tended to leave their jobs at the same rate as men at five of the six laboratories. At one laboratory, women were more likely to leave. Similarly, minorities tended to leave their jobs at the same rate as Whites at five of the laboratories. At one of the laboratories, minorities were more likely to leave.

- *Promotions.* Promotions for groupings of laboratory staff by race/ethnicity and sex met or exceeded 80 percent of the promotion rate of White men at five of the six laboratories but did not for Blacks and Asian men at one laboratory. In using the 80 percent rule, we are not assessing statistical differences, but rather we are using a recognized guideline for identifying whether substantial differences exist for promotion rates.

Women and minority staff expressed a number of concerns about their fair and equitable treatment at the laboratories. According to DOE and laboratory studies and our interviews, concerns focused primarily around underrepresentation, the lack of career development opportunities, and the need to improve the laboratory work environment. For example, some women and minorities explained that the laboratories could further career development opportunities by offering mentoring programs. According to our analysis of complaints filed and investigated within the laboratories, the primary issues varied by laboratory and cannot be readily compared across laboratories because each laboratory records and categorizes these complaints differently. For external complaints filed under Title VII, the most often cited issues we identified were pay—an area where we have already identified statistically significant differences in the preceding section—and terminations. The highest number of external cases filed dealt with sex or race matters.

As a result of our April 2002 recommendation, OFCCP and DOE staff met to discuss the possible creation of a more formal relationship through a memorandum of understanding. While reviewing OFCCP's draft memorandum, the Department of Labor raised questions about DOE's authority and responsibility for EEO matters at the laboratories. As a result, OFCCP has not sent the draft memorandum to DOE for coordination. OFCCP maintains that Executive Order 11246, as amended, made OFCCP solely responsible for enforcing federal contractors' compliance with EEO obligations. DOE officials agree. However, DOE and OFCCP appear to disagree about the scope of DOE's authority to implement DOE's diversity policies. DOE maintains that its activities in pursuit of diversity under the DEAR provision and its contracting guidance are independent of OFCCP's enforcement authority. OFCCP officials, however, have raised concerns about whether DOE's implementation of its diversity policies under the DEAR and its guidance might encroach upon OFCCP's enforcement authority.

To understand the implications of the statistical differences we found and evaluate their practical significance, we are recommending that the Secretary of Labor direct OFCCP to work with the laboratories to determine their causes and take the necessary corrective steps, if appropriate, to address any EEO problems identified. We are also recommending that the Secretaries of Labor and of Energy work together to define the scope of DOE's contract administration oversight responsibility for diversity.

In commenting on a draft of this report both DOE and the Department of Labor agreed to work together to resolve EEO oversight issues, although neither specifically commented on our recommendations. However, DOE stated that our analytical method differs from the method their laboratories would use in their analyses. We disagree. The methodology that we use is similar to the methodology that OFCCP has recently proposed that federal contractors with more than 250 employees use to conduct annual self-evaluations of compensation practices. Our analyses of salaries, merit pay, and separation patterns at each of the laboratories included factors that OFCCP's proposed guidance identifies as legitimately affecting compensation, such as experience, education, and performance, as well as other factors that the laboratories specifically identified.

In addition, both DOE and the Department of Labor commented that our analytical methods differ from those OFCCP uses. We acknowledge these differences, but note that our analyses and OFCCP's analyses have a different purpose. As we state in our report, our analyses were not designed to prove or disprove discrimination, but are a first step in identifying whether differences exist that may require further investigation. In contrast, OFCCP uses its analyses to determine whether discrimination has occurred.

Background

The six nonweapons multiprogram laboratories we reviewed—Argonne, Brookhaven, Lawrence Berkeley, Oak Ridge, and Pacific Northwest National Laboratories, and Idaho National Engineering and Environmental Laboratory—are managed by contractors from both universities and private industry. The laboratories have a total workforce of about 21,000 employees and range in size from fewer than 2,500 at Lawrence Berkeley to more than 5,000 at Idaho. Figure 1 shows the location of these six multiprogram laboratories.

Figure 1: Location of the Six Multiprogram Laboratories Reviewed

Source: GAO.

Executive Order 11246, as amended, provides generally the same prohibitions against discrimination for federal government contractors as Title VII of the Civil Rights Act of 1964, as amended.[14] The order states that federal contractors will not discriminate against an employee or applicant for employment on the basis of race, color, religion, sex, or national origin. In addition to the requirements of Title VII, the order further states that federal contractors will take affirmative action to ensure that applicants and employees are treated without regard to their race, color, religion, sex, or national origin in personnel actions, including recruitment and hiring, pay, benefits, promotion, selection for training, demotions and transfers, lay-offs, and termination. Under OFCCP regulations, the contractors must develop affirmative actions plans that spell out the steps they will take to ensure EEO.

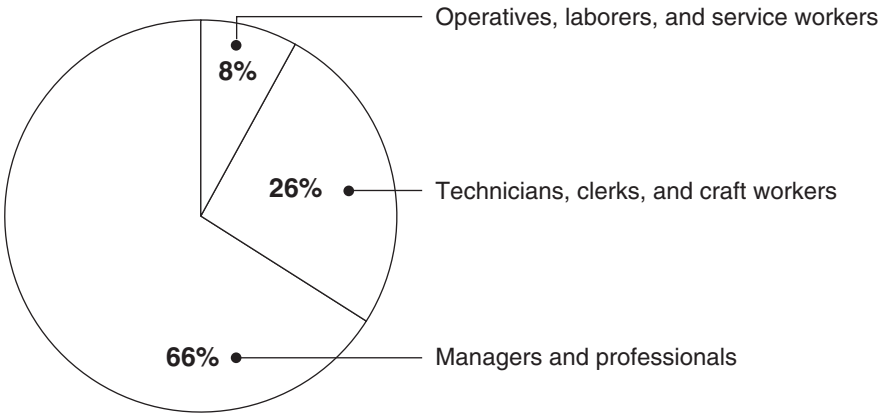
OFCCP's regulations implementing the executive order require contractors, including the laboratories, to submit data annually to EEOC on

[14]Under certain circumstances, the Secretary of Labor may exempt a contracting agency from including any or all of the EEO provisions of Executive Order 11246 in a specific contract.

specific job categories, by race/ethnicity and sex.[15] Private-sector employers provide annual employment statistics by sex for each of nine major job categories and for each of five population groups: Whites, Blacks, Hispanics, Asians or Pacific Islanders, and American Indians or Alaskan Natives. We used data on race/ethnicity, sex, and the nine job categories that the laboratories are required to provide to EEOC and combined those data into three job category groups: managers and professionals; technicians, clerks, and craft workers; and operatives, laborers, and service workers.[16]

Figure 2 shows the six laboratories' staff by job category.

Figure 2: Composition of Staff by Job Category, 2003



Source: GAO analysis of EEO-1s obtained from the six multiprogram laboratories (2003).

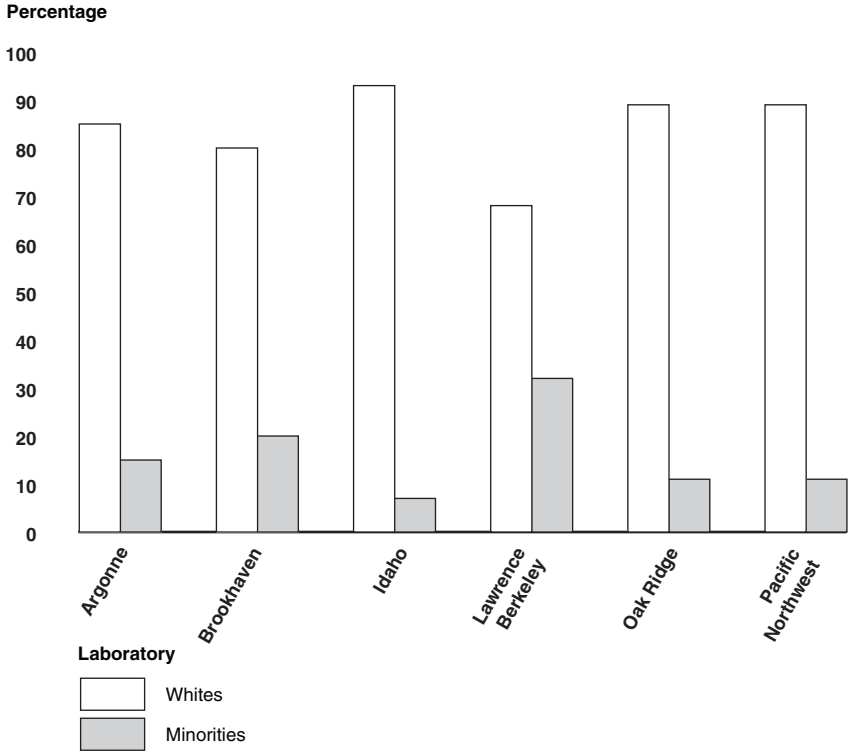
According to their 2003 data, the six laboratories vary somewhat in the composition of their staffs. While minorities account for less than 10

[15]Technically, federal contractors submit these data on the Employer Information Report (EEO-1) forms, otherwise known as Standard Form 100, to the Joint Reporting Committee, which consists of EEOC and OFCCP. While EEOC and OFCCP jointly dictate EEO-1 requirements, the responsibility for administering this survey has historically been held by EEOC. Thus, we will refer to EEOC in the report rather than the Joint Reporting Committee when we discuss EEO-1s. EEOC uses these data to help determine whether employers have potentially engaged in, or are engaging in, discriminatory employment practices.

[16]We did not include sales workers in our analysis because the laboratories do not have sales workers and report zero in this category.

percent of the staff at Idaho, they account for more than 30 percent at Lawrence Berkeley. Figure 3 shows the proportion of Whites to minorities at the six laboratories.

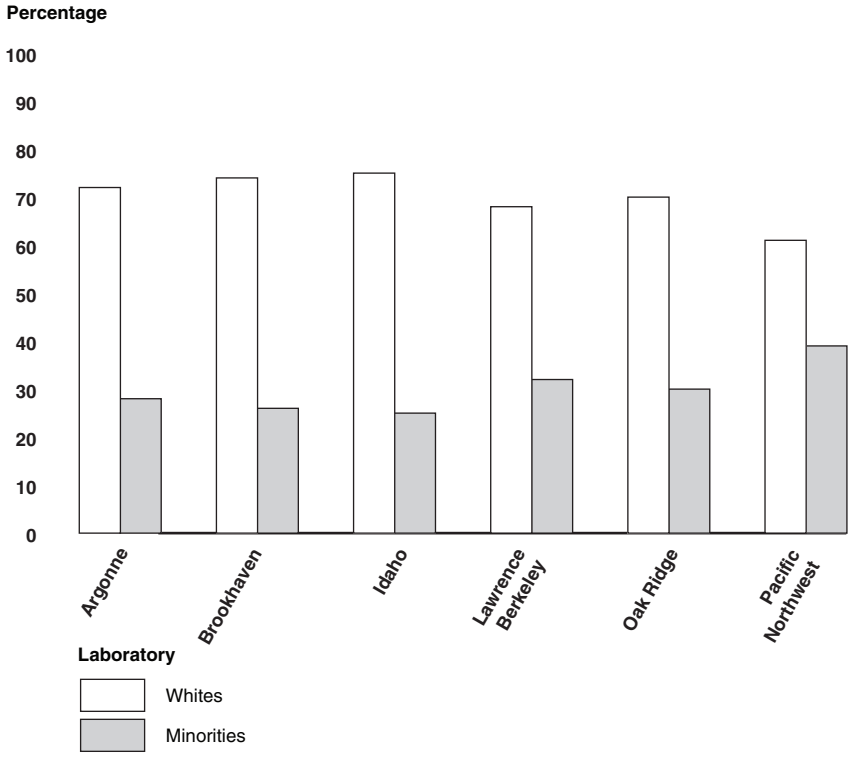
Figure 3: Percentage of Laboratory Population by Race (Whites and minorities), 2003



Source: GAO analysis of EEO-1s obtained from the six multiprogram laboratories (2003).

The ratios of men to women were similar across the laboratories, ranging from 61 percent men and 39 percent women at Pacific Northwest to 75 percent men and 25 percent women at Idaho. Figure 4 shows the composition of staff at all six laboratories by sex.

Figure 4: Percentage of Laboratory Staff by Sex, 2003



Source: GAO analysis of EEO-1s obtained from the six multiprogram laboratories (2003).

The laboratories take a number of actions to fulfill their EEO responsibilities. These include, among other things,

- submitting information on the composition of their labor force to EEOC and DOE;
- developing affirmative action programs that are designed not only to improve the number of women and minorities for specific jobs in which they are underrepresented but to ensure that the laboratory has fulfilled its EEO responsibilities;
- preparing diversity plans, which detail the laboratories' efforts to promote workforce diversity by training employees on the importance of diversity at the laboratories and on the prevention of racial profiling;

- providing mechanisms through which staff can raise EEO concerns or complaints; and
- developing annual self-assessments on their EEO performance for DOE's review.

Appendix II provides more detailed data for each of the six laboratories.

Available Data Show Some Statistically Significant Differences in Salaries, Merit Pay Increases, and Separation Patterns for Managerial and Professional Women and Minorities and One Instance of Substantially Lower Promotion Rates

For fiscal years 2001 through mid-2004, we found some statistically significant differences in salaries, merit pay increases, and separation patterns for managerial and professional women and minorities when compared with men and Whites. We also found one instance in which promotion rates for selected minorities were substantially lower than for White men. Statistically significant differences do not prove or disprove discrimination; rather, they provide information at an aggregate level about differences in personnel actions and may indicate a need for further investigation.

Women Tended to Receive Lower Salaries than Men, While Salaries for Minorities Were Generally Equal to Those of Whites

We found statistically significant differences in salaries for women when compared with men in managerial and professional job categories at five of the six DOE laboratories, and for minorities in managerial and professional job categories when compared with Whites at one laboratory. These statistical differences remained after holding constant occupational classification, organizational division, age, tenure at the laboratory or within grade, employment status (including postdoctoral, part-time and

temporary status), management status, citizenship, and education level where data were available.[17] Table 1 presents the results of our analysis.

Table 1: Percent Differences in Salaries for Women and Minorities, Fiscal Years 2001 through mid-2004

Laboratory	Women compared with men	Minorities compared with Whites
Argonne	-3.6%	
Brookhaven	-3.0%	
Idaho	-2.0%	
Lawrence Berkeley	-3.1%	-1.5%
Oak Ridge	-3.6%	
Pacific Northwest		

Source: GAO analysis of laboratory data.

Note: Negative numbers indicate that the group earned a lower salary than its counterpart and blank spaces indicate that there were no significant differences for that group compared with men and Whites.

Half of the Laboratories Showed Differences in Merit Pay Increases for Either Women or Minorities or Both Compared with Men and Whites

While our analysis showed that the merit pay increases for full-time and nontemporary managerial and professional women and minorities tended to be statistically comparable to merit pay increases for their respective counterparts at three of the laboratories, results were mixed at the other three laboratories. These statistical differences remained after holding constant occupational classification, organizational division, performance score, age, salary, tenure at the laboratory or within grade, employment status, management status, citizenship, and education level where data

[17]Our analysis accounts for a large percentage of the annual salary variance, including that attributable to race/ethnicity and sex. Specifically, our model explains 88, 88, 95, 91, 85, and 96 percent of the variance at Argonne, Brookhaven, Idaho, Lawrence Berkeley, Oak Ridge, and Pacific Northwest, respectively. The remaining differences may be attributable to factors that were not captured in the databases maintained by the laboratories, such as the effect of prior work experience.

were available.[18] Merit pay increases were higher for women and minorities at one, higher for women at another, and lower for minorities at the third compared with men and Whites. Table 2 presents the results of our analysis.

Table 2: Percent Differences in Merit Pay Increases for Women and Minorities, Fiscal Years 2001 through mid-2004

Laboratory	Women compared with men	Minorities compared with Whites
Argonne		-3.7%
Brookhaven	7.0%	3.2%
Idaho	5.3%	
Lawrence Berkeley		
Oak Ridge		
Pacific Northwest		

Source: GAO analysis of laboratory data.

Note: Positive numbers indicate that the group earned a higher merit pay increase than its counterpart, negative numbers indicate that the group earned a lower merit pay increase, and blank spaces indicate that there were no statistically significant differences for that group compared with men and Whites.

Separation Patterns for Women and Minorities Were Generally Comparable to Men and Whites

Managerial and professional women tended to separate from their jobs (leave) at a comparable rate as men at five of the six laboratories. Similarly, managerial and professional minorities tended to leave their jobs at a comparable rate as Whites at five of the laboratories. However, at one laboratory, women were more likely to leave than men, and at another laboratory, minorities were more likely to leave than Whites. These statistical differences remained while holding constant performance score, age, salary, tenure at the laboratory or within grade, employment status, management status, citizenship, and education level where data were available. Separations include both voluntary actions, such as retirement, and involuntary actions, such as reductions in force and terminations for

[18]Our analysis accounts for a large percentage of the merit pay increase variance, including that attributable to race/ethnicity and sex. Specifically, our model explains 76, 74, 78, 69, 75, and 63 percent of the variance at Argonne, Brookhaven, Idaho, Lawrence Berkeley, Oak Ridge, and Pacific Northwest, respectively. The remaining differences may be attributable to factors that were not captured in the databases maintained by the laboratories, such as the effect of involvement in special or high-profile projects.

cause. While a greater likelihood of separation is not necessarily indicative of race or sex-based problems at the laboratories, race and sex-based patterns of separation are important to evaluate in order to ensure they are not indicative of broader concerns about women's or minorities' treatment at the laboratories. Table 3 presents the results of our analysis.

The 1.4 shown in table 3 indicates that women at Idaho were 40 percent more likely to leave than men, while the 1.7 indicates that minorities at Pacific Northwest were 70 percent more likely to leave than Whites. Had our analysis shown that any group was less likely to leave than its respective counterpart, we would have indicated this using a number less than 1.

Table 3: Differences in the Likelihood of Separating from the Laboratories for Women and Minorities, Fiscal Years 2001 through mid-2004

Laboratory	Women compared with men	Minorities compared with Whites
Argonne		
Brookhaven		
Idaho	1.4	
Lawrence Berkeley		
Oak Ridge		
Pacific Northwest		1.7

Source: GAO analysis of laboratory data.

Note: Numbers greater than 1 indicate that the group has a greater likelihood to leave than their respective counterpart and blank spaces indicate that there were no significant differences for that group.

Promotions for Women and Minorities Were Generally Comparable to Those of White Men

We found that management promotions for groupings of laboratory staff by race/ethnicity and sex generally met or exceeded 80 percent of the promotion rate of White men, with the exception of Idaho.[19] At Idaho, an additional Black man and woman, and four additional Asian men would have been needed to meet 80 percent of the promotion rate of White men. However, Idaho promoted nearly twice the number of Hispanics than would have been needed to meet the 80 percent criterion for that group.

Table 4 shows, for each laboratory, the number of actual promotions in the 3-1/2-year period by race/ethnicity and sex and the additional number of promotions needed to reach 80 percent of the White male promotion rate. Blank spaces indicate that the 80 percent rule was met or exceeded (no additional staff needed to meet 80 percent of the White male promotion rate).

[19]We used the 80 percent rule set out in the federal government's Uniform Guidelines on Employee Selection Procedures as a criterion for determining whether the promotions of women and minorities reflect the diversity of the potential applicant pools. Using the 80 percent rule, we first determined the proportion of promotions for each race/ethnicity and sex group on the basis of its proportions at the laboratories in the 3-1/2-year period (the potential applicant pool). We then determined whether the proportions for each race/ethnicity and sex group represented the proportions for White men. (We used White men as the comparison group, rather than the group with the highest selection rate, because this method allowed us to compare race/ethnicity and sex groups with the same group across the laboratories.) Unlike the analyses of salary, merit pay, and separations, we did not control for any factors that might influence the likelihood of promotion. Additionally, we did not determine whether individuals in the "pool" had applied for a promotion or if they were eligible for a promotion in the 3-1/2-year period.

Table 4: Number of Promotions for Groupings by Race/Ethnicity and Sex and Number of Additional Promotions Needed to Reach 80 Percent of the Promotion Rate of White Men, Fiscal Years 2001 through mid-2004

	Argonne		Brookhaven	
	Promoted	Needed	Promoted	Needed
White men	419		287	
Black men	5		10	
Hispanic men	9		8	
Asian men	56		27	
American Indian men	1		0	
White women	116		119	
Black women	8		12	
Hispanic women	4		5	
Asian women	15		7	
American Indian women	0		0	

Idaho		Lawrence Berkeley		Oak Ridge		Pacific Northwest	
Promoted	Needed	Promoted	Needed	Promoted	Needed	Promoted	Needed
932		236		366		673	
4	1	11		11		7	
20		16		7		31	
9	4	45		24		57	
12		1		0		6	
305		136		135		319	
0	1	12		7		2	
20		9		1		17	
9		43		6		22	
5		1		0		4	

Source: GAO analysis of laboratory data.

Notes: Numbers are rounded down.

Blank spaces indicate that the 80 percent rule was met or exceeded (no additional staff needed to meet 80 percent of the White male promotion rate).

Laboratory Staff Raised a Number of EEO Concerns

Women and minority staff expressed a number of concerns about their fair and equitable treatment at the laboratories, focusing primarily on underrepresentation, the lack of career development opportunities, and the need to improve the laboratory work environment. We identified these concerns through our interviews with representatives of the laboratories, laboratory women's and minority employee groups, and our review of DOE and laboratory surveys and studies of laboratory staff. Furthermore, according to our analysis of Title VII complaints filed and investigated within the laboratories (internal), the issues identified from data provided by the laboratories varied and did not lend themselves to comparison across laboratories because the laboratories do not record and categorize the complaints in a consistent manner. Finally, our analysis of Title VII complaints filed and investigated by an organization outside of the laboratories (external) identified pay and terminations as the most often cited areas of concern. The highest number of external cases filed dealt with sex or race matters. As discussed in the preceding section, we found statistically significant differences in pay. We did not attempt to prove or

disprove the validity of these concerns, nor did we assess the laboratories' efforts to address them.

Employee Groups, Surveys, and Studies Indicated Three Primary Concerns

According to our interviews with representatives of employee groups and our review of DOE and laboratory surveys and studies, women and minority staffs' EEO concerns center primarily around three key areas: (1) underrepresentation of women and minorities in science positions and management positions, (2) lack of career development opportunities, and (3) a laboratory work environment that needs improvement.

Underrepresentation of Women and Minorities

Women and minorities were primarily concerned with what they perceive as underrepresentation at the laboratories, particularly in science and management positions, according to our interviews and reviews of DOE and laboratory surveys and studies. For example:

- The representatives stated a need for increased efforts on the part of the laboratories to increase representation of women and minorities in science positions. According to a representative we spoke with, this shortage occurred in part because of limited recruiting at universities with large numbers of minorities, such as historically black colleges and universities. The representatives also cited a need for increased transparency in the hiring and promotion process.

- More than 60 percent of the members of the Asian Pacific American Committee at Oak Ridge believed that Asians were underrepresented in management positions at the laboratory, according to a May 2002 survey.[20] According to an official at Oak Ridge, the laboratory's management has established programs to identify and overcome barriers to upward movement within the laboratory. For example, the laboratory offered in-house professional training for Asian staff and their managers, and the laboratory added leadership training specifically for Asians to the management training curriculum.

Lack of Career Development Opportunities

Some women and minority staff raised concerns about the limited career development opportunities available at the laboratories. For example:

[20]The survey was distributed to approximately 120 Asian staff at the laboratory, with 95 (about 79 percent) responding.

- Representatives of the employee groups suggested the laboratories would benefit from instituting mentoring programs to help employees plan and take control of their careers. The need for such programs is compounded by the fact that women and minorities often do not have role models in management positions, and therefore the laboratories need to address how to help "grow staff" for such roles.

- According to an August 2003 study at Argonne,[21] career development for women ranked as one of the top three goals for the women's group to focus its future efforts. It also cited women's lack of familiarity with career paths for science and technology positions at the laboratory as a problem. The report suggested that clearer identification of these paths would be beneficial to all employees, particularly minorities, who lack a significant number of role models at the laboratory.

Laboratory Work Environment

Although the representatives of the employee groups stated that management has worked to create a better atmosphere for women and minorities at the laboratories, they identified a number of issues that continue to concern them. For example:

- According to staff at Idaho, diversity and EEO matters have lost visibility as a management issue because the laboratory has changed its Diversity/Affirmative Action Specialist within the human resources office from a full-time, management position to a part-time nonmanagement position. However, an Idaho official told us that the position focuses full-time on EEO issues, but other human resources duties may be performed if time permits.

- According to staff at Lawrence Berkeley, the laboratory established a diversity committee to encourage understanding of cultural differences among employees. However, the committee does not have upper management representation and therefore possesses limited influence. According to a Lawrence Berkeley official, the laboratory created the Best Practices Diversity Council in January 2003 to address these concerns. The council does have management representation and works to implement diversity best practices and processes at both the division and laboratory level.

[21]The survey from the *10-year Anniversary of Women in Science and Technology at Argonne: An Evaluation of its Past, Present, and Future* was distributed to 150 scientific and technical women at the laboratory of which 103 (69 percent) responded.

- According to a 2001 Update Survey conducted at Brookhaven,[22] women responded less favorably than laboratory staff overall about whether the laboratory provided a working environment that was accepting of sex differences. In addition, Black and Hispanic employees responded less favorably than laboratory staff overall about whether laboratory management supported diversity in the workplace.

Internal Complaints Covered a Variety of Issues

During the 3-1/2-year period we examined, five of the six laboratories received 187 internal complaints dealing with race, color, religion, sex, or national origin concerns.[23] Because the process for collecting and recording information, particularly specific data, on internal complaints is different at each laboratory, we were not able to compare numbers and types of complaints filed across the laboratories. Furthermore, the laboratories have a number of avenues available to employees for filing internal complaints, ranging from working through their direct supervisor to working through the laboratory's human resources or EEO offices. As a result, some of the laboratories do not have one centralized repository for collecting specific or consistent information on each complaint. Consequently, we were not able to ensure that the information we received included the entire universe of internal complaints filed at the laboratories. Nevertheless, the information does provide an overall picture of the complaints dealing with race, color, religion, sex, or national origin at each laboratory and general characteristics about the complainants. In addition, the data represent complaints filed by staff and investigated within the laboratories and do not necessarily indicate any illegal activity on the part of the laboratories.

Table 5 presents the most often cited issues as classified by the laboratories for the internal complaints at each laboratory that provided these data. [24]

[22]Brookhaven's Diversity Manager was uncertain how many surveys were distributed, but survey results indicate that the laboratory received 1,783 responses. These results were statistically significant at the 95 percent confidence level.

[23]Five of the six laboratories submitted information regarding internal complaints filed; Brookhaven did not submit data on internal complaints.

[24]The analysis was conducted on the raw data as provided by the laboratories.

Table 5: Most Often Cited Issues Identified from Internal Complaints on File, Fiscal Year 2001 through June 25, 2004

Laboratory	Issue
Argonne	Harassment
Idaho	Offensive comments, materials, and actions
Lawrence Berkeley	Hostile work environment
Oak Ridge	Failure to hire
Pacific Northwest	Sexual harassment

Source: GAO analysis of laboratory data.

Notes: Brookhaven did not submit data on internal complaints.

A single complaint may have more than one issue associated with it. As a result, if a complaint has multiple issues, some of the issues may not be for race, color, religion, sex, or national origin bases. We included any complaints that had at least one such basis.

Our analysis of the type of staff filing these complaints at each laboratory shows the following:

- At Argonne, Idaho, and Pacific Northwest, women filed the majority of the complaints.
- At Oak Ridge, men filed the majority of the complaints.
- At Lawrence Berkeley, the complaints were evenly divided between men and women.
- At Argonne, Idaho, and Pacific Northwest, White staff filed the majority of the complaints.
- At Oak Ridge, Asian staff filed the highest number of complaints.
- At Lawrence Berkeley, Asian and Black staff filed the highest number of complaints.

External Complaints Most Often Cited Pay and Terminations as Areas of Concern

Laboratory employees filed 48 complaints dealing with Title VII concerns between fiscal years 2001 through mid-2004. The highest number of external cases filed dealt with sex or race matters.[25] Lawrence Berkeley reported the highest number of complaints (17), followed by Brookhaven (14). As table 6 shows, pay and termination were the two issues cited most often.

Table 6: Issues Presented in External Complaints, Fiscal Year 2001 through June 25, 2004

Issue	Total
Pay	10
Termination and dismissal	6
Harassment	4
Promotion	4
Layoff/reduction-in-force	3
Americans with Disabilities Act	2
Demotion	2
Job Assignment	2
Performance evaluations or ratings	2
Other[a]	7
Total	**42**

Source: GAO analysis of laboratory data.

Notes: The 42 issues cited in table 6 correspond to 34 external complaints. Brookhaven did not submit information on issues associated with its 14 external complaints.

Because a single complaint may have more than one issue associated with it, the total number of issues does not match the total number of external complaints filed. In addition, if a complaint has multiple issues, some of the issues may not be for Title VII matters. We included any complaints that had at least one Title VII basis.

[a]"Other" includes seven different issues that were each identified once.

As table 7 shows, minorities filed 34 of the 48 complaints, with Black women filing the highest number of any minority group (11 of 48).

[25]A Title VII complaint can be filed on the basis of race, color, religion, sex, or national origin.

Table 7: External Complaints by Sex and Race/Ethnicity, Fiscal Year 2001 through June 25, 2004

	Sex	
Race/ethnicity	**Women**	**Men**
White	11	3
Black	11	10
Hispanic	4	2
Asian	3	4
American Indian	0	0
Total	**29**	**19**

Source: GAO analysis of laboratory data.

OFCCP and DOE Have Distinct Roles and Responsibilities for EEO

In our April 2002 report, we recommended that DOE and OFCCP explore the costs and benefits of a more formal, collaborative relationship toward their common goal of EEO compliance at the laboratories. OFCCP and DOE staff met to discuss the implementation of the recommendation and the possible creation of a more formal relationship through a memorandum of understanding. OFCCP provided the draft memorandum to the Department of Labor's Office of the Solicitor for review to ensure that it complied with applicable laws and regulations. As a result of its review, the Office of the Solicitor raised questions about DOE's legal authority to monitor and to enforce Executive Order 11246, as amended. As a result, OFCCP has not sent the draft memorandum to DOE for coordination. In addition, in the course of this review, GAO observed that the DEAR requires that DOE management and operating contracts contain a diversity clause, requiring the contractor to submit a diversity plan to DOE. Also, DOE's guidance for contracting officers contains provisions calling on the contracting officer to evaluate the contractor's diversity activities. While OFCCP has not reached any conclusions, it has concerns that DOE's implementation of these diversity provisions might encroach upon OFCCP's EEO enforcement authority.

According to OFCCP, it is the only executive agency with the authority to enforce a contractor's compliance with Executive Order 11246, as amended. Before the executive order was amended in 1978, responsibility for compliance with EEO obligations was dispersed among 11 different agencies, including DOE. Because agency standards, procedures, and reporting requirements were not uniform, contractors faced differing

agency requirements. The amended executive order concentrated full responsibility for EEO contractor compliance, including the authority to issue regulations and binding orders with the Secretary of Labor, who delegated this responsibility to OFCCP. Under the executive order, the contracting agencies are responsible for including the EEO clause in each nonexempt[26] contract, cooperating with the Secretary of Labor by providing the information and assistance the Secretary requires, and complying with the terms of the executive order and implementing regulations and orders. The obligations of contracting agencies, contractors, and subcontractors under the executive order are set out in OFCCP regulations[27] and provisions of the Federal Acquisition Regulation (FAR).[28]

OFCCP maintains that DOE lacks authority as part of contract administration to evaluate a laboratory contractor's compliance under the contract with the EEO requirements of the executive order and its implementing regulations. OFCCP states, for example, that DOE does not have authority to reduce the contractor's fee for EEO violations cited by OFCCP. In OFCCP's view, DOE's reduction of a contractor's fee would be tantamount to imposing a monetary penalty on the contractor, which is not authorized under the terms of the executive order and its implementing regulations.[29] In addition, according to OFCCP, to permit DOE to impose standards or sanctions beyond those administered by OFCCP could reintroduce inconsistencies and the conflicts between EEO objectives and procurement objectives that led to the 1978 centralization of EEO enforcement within the Department of Labor.

DOE officials agree that OFCCP is solely responsible for the administration and enforcement of the EEO provisions of government contracts. In this regard, DOE states that its EEO responsibilities are limited to those

[26]The Executive Order authorizes the Secretary of Labor, when special circumstances in the national interest require, to exempt a contracting agency from the requirement of including any or all provisions of the EEO contract clauses in a specific contract or subcontract.

[27]41 C.F.R. part 60-1.

[28]*See*, *e.g.*, 48 C.F.R. § 22.803(c) (responsibilities of agency to carry out FAR EEO requirements and cooperate with OFCCP); 48 C.F.R. § 22.810(e) (requirement to insert EEO clause); and 48 C.F.R. § 52.222-26 (EEO clause).

[29]DOE officials note that a contractor's failure to earn the maximum fee available is not a penalty, but a failure to satisfy the measures associated with maximum performance.

conferred by the FAR, that is, to include the appropriate provisions and clauses in solicitations and contracts and to refer complaints to and cooperate with OFCCP, as prescribed by the FAR.

In addition to the FAR requirements for EEO, DOE has diversity policies that are reflected in the DEAR requirement that each management and operating contract contain a diversity clause, and in provisions of DOE's reference guidance for contracting officers. DOE views its activities with regard to the inclusion of the DEAR diversity clause and pursuit of diversity as independent of OFCCP's jurisdiction. However, OFCCP has pointed out several areas in the DEAR and DOE's guidance as possibly infringing on OFCCP's EEO enforcement authority. For example:

- The DEAR requires each management and operating contract to contain a clause requiring that the contractor submit a diversity plan to the DOE contracting officer within 90 days of the effective date of the contract.[30] This plan, at a minimum, is to address the contractor's approach for promoting diversity through its workforce, education and community outreach, subcontracting, economic development, and the prevention of racial profiling. DOE's policy guidance for contracting officers[31] states that this plan may discuss how the contractor has or plans to establish and maintain result-oriented EEO and affirmative action programs in accordance with the requirements of EEO and affirmative action contract clauses and how the contractor's organization includes or plans to include elements/dimensions of diversity that might enhance such programs.[32] OFCCP told us that these provisions raised concerns about DOE's implementation of the diversity plan requirement.

- According to DOE's policy guidance for contracting officers, each DOE contracting officer is to evaluate the contractor's performance in implementing its diversity plan.[33] In addition, contracting officers are to evaluate the extent to which the plan demonstrates the contractor's commitment, among other things, to diversity, cultural sensitivity, and

[30]48 C.F.R. § 970.2671-1 (policy), 48 C.F.R. § 970.2671-2 (requirement to insert clause), and 48 C.F.R. § 970.5226-1 (contract clause).

[31]*Department of Energy Reference Book for Contract Administrators*, Chapter 12, "The Diversity Plan, Equal Employment Opportunity, and Small Business" (revised April 4, 2003).

[32]*Id.* at 12-4.

[33]*Id.* at 12-3.

inclusion in all aspects of its business practices, the workplace, and relations with the community at large.[34]

OFCCP believes that DOE's diversity plan requirements and policy may put DOE in the position of evaluating contractors' compliance with the requirements of the EEO laws that OFCCP is solely responsible for enforcing and encroach upon OFCCP's enforcement authority. DOE states, however, that its efforts to promote diversity under its contracts through the diversity clause are independent of enforcement of the EEO clause and OFCCP's authorities under the executive order. DOE views its efforts as being in pursuit of an agency value of workforce diversity in carrying out its mission.

Conclusions

DOE has issued policies that are intended to ensure that the department maintains a respectful and productive work environment for both federal and contractor employees. While our findings of statistically significant differences in salaries, merit pay increases, and separation patterns for managerial and professional women and minorities compared with men and Whites and our finding of a difference at one laboratory in promotion rates for certain minority groups compared with White men do not prove or disprove discrimination, they may indicate a need for further investigation.

OFCCP and DOE agree that OFCCP has sole responsibility under the executive order for the administration and enforcement of the EEO provisions of government contracts. However, the agencies do not appear to agree about the extent to which DOE has authority to implement its diversity policies. While DOE views its implementation of the DEAR diversity clause and diversity guidance as independent of OFCCP's authorities, OFCCP has raised concerns about whether DOE's implementation might encroach upon its enforcement authority. Although we commend DOE for its desire to have a diverse workforce and its initiative for including contract clauses to achieve that goal, the departments of Labor and of Energy need to clarify and reach agreement about DOE's role concerning its contractors' diversity activities.

[34] *Id.* at 12-3 to 12-4.

Recommendations for Executive Action

To understand the implications of the statistical differences we found and evaluate their practical significance, we recommend that the Secretary of Labor direct OFCCP to work with the laboratories to determine their causes and take the necessary corrective steps, if appropriate, to address any EEO problems identified.

We also recommend that the Secretaries of Labor and of Energy work together to define the scope of DOE's contract administration oversight responsibility for diversity.

Agency Comments and Our Evaluation

We provided DOE and the Department of Labor with draft copies of our report for their review and comment. DOE's written comments on our report did not address our recommendations, but DOE stated that it is ready to continue its effort to work with OFCCP to define the working relationship of the two departments. DOE also expressed concern about the accuracy of our analyses stating that the criteria that we used differed from that used by the laboratories and OFCCP. Actually, the methodology that we use is similar to the methodology that OFCCP has recently proposed that federal contractors with more than 250 employees use to conduct annual self-evaluations of compensation practices.[35] Our analyses of salaries, merit pay, and separation patterns at each of the laboratories included factors that OFCCP's proposed guidance identifies as legitimately affecting compensation, such as experience, education, and performance, as well as several other factors that some of the laboratories specifically identified. In fact, we tested a number of modifications to our models in response to questions posed by several of the laboratories. None of these modifications resulted in significant changes to our findings. Furthermore, as we state in our report, unlike the analyses conducted by OFCCP, our analyses do not, and were not designed to, prove or disprove discrimination. Rather, our analyses are intended to identify issues or problems that may need to be investigated further.

DOE also commented that our analyses were questionable because we revised the statistics for Idaho. DOE suggested that if similar vigor were applied to all the report's statistics, other changes might result. We disagree. The revisions to the Idaho statistics were not the result of a change to our methodology, but resulted from including additional data

[35] 69 *Fed. Reg.* 67252, 67254 (Nov. 16, 2004).

provided by the laboratory during the report's comment period. The other laboratories had provided this data earlier. Instead of undermining the validity of our analyses, our actions reflect our commitment to reporting complete and accurate information.

Lastly, DOE restated its position that its role in fostering contractors' workforce diversity does not conflict with OFCCP's role in enforcing contractors' equal employment obligations.

In its written comments, the Department of Labor pointed out that OFCCP's methods of statistical analysis differ from the analysis methods we used in this report and that OFCCP's methods are designed to determine if a contractor is engaged in unlawful employment discrimination. Our report recognizes this role for OFCCP and clearly states that our analyses are not designed to prove or disprove discrimination in a court of law like OFCCP's analyses. Our report clearly states that our analyses are designed to provide information at an aggregate level about differences in personnel actions that may need further investigation. Because our analyses identified statistically significant differences in salaries, merit pay increases, and separation patterns, and substantial differences in promotion rates for women and minorities at the six laboratories, we have recommended that OFCCP work with the laboratories to determine the causes of these differences and take the necessary corrective steps, if appropriate, to address any EEO problems identified. In response to our recommendations, the Department of Labor stated that OFCCP will continue to work with DOE with regard to contract oversight.

DOE's and the Department of Labor's written comments are presented in appendixes III and IV, respectively.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to appropriate congressional committees; the Secretary of Energy; the Secretary of Labor; the Chair, Equal Employment Opportunity Commission; the Director, Office of Management and Budget; and other interested parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov.

If you or your staff have any questions, please call me at (202) 512-3841. Key contributors to this report are listed in appendix V.

Sincerely yours,

Robin M. Nazzaro

Robin M. Nazzaro
Director, Natural Resources
and Environment

Scope and Methodology

This appendix details the methods we used to (1) determine whether there were differences in salaries, merit pay increases, and separation patterns for women and minorities when compared with men and Whites, and in the promotion rates of groupings of laboratory staff by race/ethnicity and sex compared with White men, for fiscal years 2001 through mid-2004; (2) describe equal employment opportunity (EEO) concerns raised by laboratory staff; and (3) determine the actions the Department of Energy (DOE) and the Office of Federal Contract Compliance Programs (OFCCP) have taken to implement our earlier recommendation to work more collaboratively to ensure the laboratories' compliance with EEO.[1] In addition, this appendix provides information on the methods we used to develop the personnel data provided in the background section of the letter and in appendix II.

Our review focused on personnel actions and EEO concerns at six DOE multiprogram laboratories: Argonne National Laboratory in Argonne, Illinois, and Idaho Falls, Idaho; Brookhaven National Laboratory in Upton, New York; Idaho National Engineering and Environmental Laboratory in Idaho Falls, Idaho; Lawrence Berkeley National Laboratory in Berkeley, California; Oak Ridge National Laboratory in Oak Ridge, Tennessee; and Pacific Northwest National Laboratory in Richland, Washington. We interviewed and obtained data and documentation from relevant officials at DOE's, OFCCP's, and EEOC's headquarters offices in Washington, D.C.; DOE officials in the Chicago, Idaho, Oak Ridge, and Richland operations offices and the Berkeley and Brookhaven site offices; and laboratory officials at the six laboratories. We performed our statistical analysis of salaries, merit pay increases, and separation patterns by comparing women to men, and minorities to Whites. For our analysis of promotions, we compared men and women in each racial/ethnic group to White men. Our statistical analysis of laboratory staff includes all exempt management and professional staff at the laboratories.[2] Limited-term staff (such as

[1]GAO, *DOE Weapons Laboratories: Actions Needed to Strengthen EEO Oversight*, GAO-02-391 (Washington, D.C.: Apr. 22, 2002).

[2]The term "exempt" refers to exemption from the provisions of the Fair Labor Standards Act. These employees are classified only in the officials and managers and professionals categories on the Employer Information Report (EEO-1) submitted to EEOC (EEOC uses these data to help determine whether employers have potentially engaged in, or are engaging in, discriminatory employment practices). There are no nonexempt employees classified as "official and manager" or "professional." Although students, postdoctoral students, and limited-term employees are not permanent employees, they are exempt employees and are in positions that would be classified as professional.

postdoctoral students who hold professional occupations on a temporary basis) were included in the analysis of salaries, but not in the analyses of merit pay increases, promotions, or separations. We reviewed only exempt employees because they represent the majority of laboratory staff, laboratories maintain personnel data for these employees, and their salaries and benefits are not negotiated by a union.

To determine whether there were differences in salaries, merit pay increases, and separation patterns for women and minorities when compared with men and Whites, and in promotion rates for women and minorities in each racial/ethnic group compared with White men, in fiscal years 2001 through mid-2004, we applied statistical tests to the laboratory-provided employee data on personnel actions. We requested data for all exempt management and professional staff for the period we reviewed. Because many of the laboratories were undergoing changes in size, funding, and structure, we chose to analyze the most recent 3-1/2 years of personnel actions, rather than just 1 year. We believed the 3-1/2-year period would provide a more accurate picture of laboratory compensation practices because unique funding or organizational effects could produce marked differences in separations, merit pay increases, and promotions in a particular year. Because we were combining information across years, we reviewed the data to ensure individuals' demographic information remained constant (e.g., race, sex, education level). Where necessary, we either excluded inconsistent cases or included variables in the models to adjust for nonconstant data. We assessed the reliability of each laboratory's data by (1) using advanced electronic testing, (2) reviewing documentation on the data systems, and (3) interviewing knowledgeable staff about the data and data system internal controls and quality reviews. Based on our assessment, we determined that the personnel data from all laboratories were sufficiently reliable for our purposes.

The federal government's Uniform Guidelines on Employee Selection Procedures direct agencies to analyze personnel actions of groups protected by Title VII of the Civil Rights Act. Under the guidelines, agencies analyze personnel actions separately by race/ethnicity and by sex. At congressional request, we performed our statistical analyses in accordance with these guidelines. We analyzed the laboratory data at the individual level using the complete population of exempt management and professional laboratory staff. The laboratories have somewhat different personnel systems and practices, and although we applied the same modeling techniques for each laboratory, we performed the analyses

separately for each laboratory. We consulted with the laboratories regarding our analytical approach to ensure that we were receiving the appropriate data for the analyses. Additionally, we consulted with OFCCP about our methodology. Our analyses are not designed to prove or disprove discrimination in a court of law; rather, they are designed to provide information at an aggregate level about race/ethnicity and sex differences in personnel actions at the laboratories. Therefore, our results do not indicate whether discrimination has occurred.

Determining Statistical Differences in Salaries, Merit Pay Increases, and Separations

To determine whether there were statistically significant race/ethnicity and sex differences in salaries, merit pay increases, and separations at each laboratory, we used multivariate regression techniques. Salaries and merit pay increases were modeled with Ordinary Least Squares regression, and separations were modeled with Logistic regression. Race/ethnicity and sex differences in salaries, merit pay increases, and separations were considered statistically significant if the probability of the t-statistic or chi-square value associated with the coefficient was 0.05 or lower. In other words, we regard race/ethnicity and sex differences in salaries, merit pay increases, and separations as significant if they have less than a 5 percent probability of resulting from chance or random fluctuations. Although a probability of .05 was used as a minimum indicator of statistical significance, results for women's salaries at all five laboratories had probabilities of .001 or less. That is, the observed sex differences in salaries have, at most, a 1 in 1,000 chance of reflecting only random fluctuations in salaries. We chose this analytic design because it (1) is widely used in human capital literature to evaluate differences in compensation and other employment-related subjects, (2) allowed for the most straightforward and parallel analysis of the laboratories' personnel data, and (3) is an appropriate statistical method for answering our first objective.

The models for salaries, merit pay increases, and separations included variables commonly used to explain variation in personnel actions, such as education level, age, and laboratory tenure. In addition, we included laboratory-specific variables, such as occupational category and organizational division, to control for the laboratory's unique classification system for comparing similarly situated individuals. Including these variables allowed us to determine whether pay differences between women and men and minorities and Whites existed despite their equality in position and in other human capital characteristics, such as tenure and education level. We controlled for these factors because they are widely used in human capital models, are generally used by the laboratories in

their compensation analysis, and are available from all six laboratories. We also included model-specific adjustment variables. For example, we included a salary variable in the merit pay increase model because merit pay increases are proportional to salary. Additionally, because we were analyzing 3-1/2 years of data, we included variables to adjust for nonconstant demographic data in the salary and merit pay increase models. The variables included in the salary models account for 88, 88, 95, 91, 85, and 96 percent of the variance in salaries at Argonne, Brookhaven, Idaho, Lawrence Berkeley, Oak Ridge, and Pacific Northwest, respectively. The variables included in the merit pay increase models account for 76, 74, 78, 69, 75, and 63 percent of the variance in merit pay increases at Argonne, Brookhaven, Idaho, Lawrence Berkeley, Oak Ridge, and Pacific Northwest, respectively.

Salary and merit pay increases represent an average for the 3-1/2-year period, adjusting for the length of time employees were on board during that period. In accordance with economic analysis literature, we used the natural log of salary and merit pay increases in our models.[3] Separations from the laboratory include voluntary actions, such as retirements and resignations, and nonvoluntary actions, such as terminations for cause. If employees terminated their employment at a laboratory for any reason in the 3-1/2-year period, they were coded as having separated. Temporary and term employees were not included in the separation analyses.

We reviewed our final models with the laboratories and performed additional analyses in response to some of their concerns. In particular, for the salary analysis of one laboratory, the laboratory considered performance score an important factor in determining pay and includes that control in its own analyses of pay. Because we included both temporary staff—who typically do not receive performance scores—and permanent staff in our analyses, we did not include performance score. To address the laboratory's concerns, we analyzed permanent staff only and included a control for average performance score. No material changes in the estimate for women's salaries resulted from the inclusion of average performance score. Additionally, the laboratory considered tenure within grade to be an important control, so we included this control in the salary analysis for the same laboratory, which also resulted in no material change

[3]Since we are not reporting any coefficients for the salary and merit pay analyses that are greater than 1 (or 100 percent), the values reported in the tables and text are appropriately interpreted as a greater or lesser percent earned as a result of sex or minority status.

to the estimate for women's salaries. Finally, one laboratory did not have tenure within grade in their database, but considered it an important factor in their pay equity studies. Consequently, we included a control indicating whether someone received a promotion in the 3-1/2-year period in the salary analysis as a proxy for tenure within grade. Our assumption was that more recent changes in pay grade should show the greatest effect on salary within grade, if tenure within grade is an important explanatory factor in salary differences. There were no material changes in the estimate of women's salaries when including this control for promotion. Because there were no material changes in the results of these additional analyses, we reported the results of our original analyses.

Promotions and the 80 Percent Rule

To determine whether promotions of management and professional women and minorities reflect the diversity of the potential applicant pool (other managers and professionals), we applied the 80 percent rule set out in the federal government's Uniform Guidelines on Employee Selection Procedures. We did not analyze promotions of nonmanagerial or nonprofessional staff because the applicant pools were either external to the laboratories or were from job categories within the laboratories that we did not examine. The potential applicant pool consists of exempt, permanent laboratory staff in managerial or professional positions at any time in the 3-1/2-year period.

Using the 80 percent rule, we first determined the proportion of promotions for each race/ethnicity and sex group based on the number of promotions received in the 3-1/2-year period and the total number of laboratory staff in each group. We then determined whether the proportions for minority men and women and White women represented at least 80 percent of the proportion for White men. Since there are a limited number of promotions every year, we examined promotions for the entire 3-1/2-year period. We did not include postdoctoral and limited-term employees in our promotion analysis because they do not receive promotions. If a personnel action denoted either a competitive or career promotion, the race/ethnicity and sex of the employee receiving the promotion was recorded. If an individual received more than one promotion in the 3-1/2-year period, the individual was counted as having one promotion. The number of individuals needed to reach 80 percent of the White male promotion rate was rounded down. For example, where a minority group was short of the 80 percent promotion rate by 2.8 people, that group would be reported as being 2 people short. Unlike the analyses of salaries, merit pay increases, and separations, we did not control for any

factors that might influence the likelihood of promotion. Additionally, we did not have data on either who was eligible to compete for a promotion or who actually applied for a promotion.

Women's and Minorities' Concerns at the Laboratories

To determine what concerns women and minorities raised at the laboratories, we primarily analyzed the available information contained in DOE and laboratory surveys and studies of laboratory staff since 2000 and the results of structured interviews we conducted with representatives of women's and minority groups at each laboratory. These women's and minority groups have memberships spanning all position levels at the laboratories, with the exception of the Argonne's women's group, which consisted solely of scientific and technical positions. Idaho does not have women's and minority employee groups, but we did speak to representatives from a laboratory diversity committee associated with one of the laboratory's divisions. In addition, although Lawrence Berkeley does not have a women's group, it selected a small group of women for us to discuss EEO issues at the laboratory. Finally, Pacific Northwest does not have minority employee groups, although we did speak with a Black scientist selected for our review by the laboratory. We included only those EEO staff concerns that we considered most relevant. We did not attempt to describe all of the EEO concerns raised or analyze the laboratories' efforts to address these concerns. We also did not attempt to prove or disprove the validity of these concerns.

Internal and External Complaints

For our analysis of complaints filed at the laboratories, we developed a template to capture detailed complaint data on internal and external complaints from fiscal year 2001 through June 25, 2004. Internal complaint data include complaints filed and investigated within the laboratory. The laboratories do not have a uniform policy for recording or managing complaints. Instead, each laboratory maintains different processes and thresholds for determining which complaints it will investigate and record. (Brookhaven did not provide data for internal complaints filed during the time period we examined.) Consequently, the numbers of internal complaints are not comparable across the laboratories. Nevertheless, internal complaint data do provide an indication of the types of Title VII concerns raised at each laboratory and the general

characteristics of complainants.[4] These data are reliable insofar as they provide an indication of the types of Title VII concerns the laboratories have experienced. However, because of the inconsistencies across and within some laboratories in the processes for managing and recording internal complaints, the data are neither comparable across the laboratories nor exhaustive of all possible complaints made by laboratory employees during the period we reviewed.

External complaint data include complaints filed with and investigated by EEOC, OFCCP, or a state and local fair employment practices agency.[5] We determined that data on external complaints were reliable for our purposes. However, due to the small number of cases, we did not discuss specific details of complaints by laboratory in order to prevent the identification of individual complainants. Because EEOC, OFCCP, and state and local fair employment practices agencies notify a laboratory's legal department, human resources, or EEO office when a complaint is filed against the laboratory, we are assured that the data we received from the laboratories contain the full universe of external complaints against them and that the data are reliable for comparison across the laboratories.

DOE and OFCCP's Actions to Implement Our 2002 Recommendation

To determine the actions DOE and OFCCP have taken to implement our 2002 recommendation, we met with responsible DOE and OFCCP officials. We also examined legislation, Executive Order 11246, as amended, OFCCP regulations, the Federal Acquisition Regulation, and DOE directives on the roles and responsibilities of DOE headquarters and field offices, OFCCP, EEOC, and the contractors in ensuring that the laboratories comply with EEO requirements.

Method for Developing Background Information in Appendix II

To provide descriptive information about laboratory staff, in terms of race/ethnicity, sex, and job category, we obtained data from the laboratories on the number of staff by race/ethnicity, sex, and job category in 2003, as reported annually by the laboratories to EEOC on the Employer Information Reports (EEO-1s). For ease of presentation, we grouped the laboratory jobs into three categories: managers and professionals, which

[4]The presence of filed complaints does not necessarily indicate that the laboratories are at fault nor that they participated in any illegal activities.

[5]Brookhaven did not provide information on the issues related to its external complaints.

constitute the majority of staff at each of the laboratories; technicians, clerks, and craft workers; and operatives, laborers, and service workers. These categories constitute eight of the nine job categories required for the EEO-1s: officials and managers, professionals, technicians, office and clerical, craft workers, operatives, laborers, and service workers. The laboratories do not have sales workers, which is the ninth category; therefore, sales workers were not part of our analysis. We determined that the EEO-1 data were sufficiently reliable for our purposes.

We conducted our review from February 2004 through December 2004 in accordance with generally accepted government auditing standards.

Information on the Six Multiprogram Laboratories

Contractors operate the six multiprogram laboratories we reviewed. These laboratories have a total workforce of about 21,000 and vary in size from fewer than 2,500 employees at Lawrence Berkeley to more than 5,000 at Idaho. Each laboratory works in several research areas, which may include basic science, medical research, information technology, environmental restoration, national security, weapons nonproliferation, and nuclear safety. In addition, they provide advanced scientific facilities that are available for use by guest scientists from industry, academia, other laboratories, and other countries. Figure 5 identifies the six laboratories and provides some profile information on them.

Figure 5: Profile Information on the Six Laboratories Reviewed

Laboratory	Location	Responsible DOE program office	Managing and operating contractor	Number of contractor employees (2003)	Total funding fiscal year 2003 (dollars in millions)
Argonne National Laboratory	Idaho Falls, Idaho; Argonne, Illinois	Office of Science	University of Chicago	3,420	$517
Brookhaven National Laboratory	Upton, New York	Office of Science	Brookhaven Science Associates	2,839	$429
Idaho National Engineering and Environmental Laboratory	Idaho Falls, Idaho	Office of Nuclear Energy, Science, and Technology	Bechtel BWXT Idaho, LLC[a]	5,075	$723
Lawrence Berkeley National Laboratory	Berkeley, California	Office of Science	University of California	2,397	$442
Oak Ridge National Laboratory	Oak Ridge, Tennessee	Office of Science	UT-Battelle, LLC	3,762	$691
Pacific Northwest National Laboratory	Richland, Washington	Office of Science	Battelle	3,380	$453

Sources: GAO, DOE, and EEO-1s obtained from the six multiprogram laboratories.

[a]On February 1, 2005, Battelle Energy Alliance, LLC, assumed management of operations at Idaho.

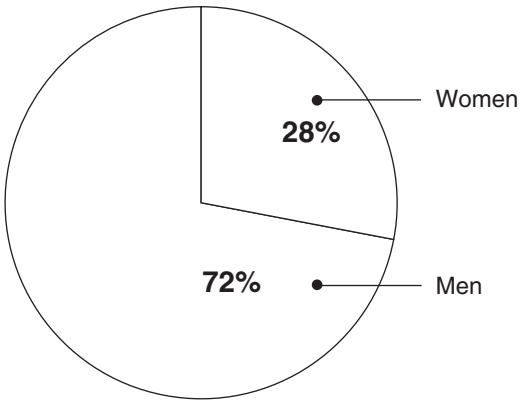
This appendix also provides a brief description of each of the six laboratories and describes the staff composition by (1) sex; (2)

race/ethnicity; (3) White men, White women, and minorities; (4) job category; and (5) job category by White men, White women, and minorities. We obtained this information from the EEO-1s the laboratories submitted in 2003.

Argonne National Laboratory

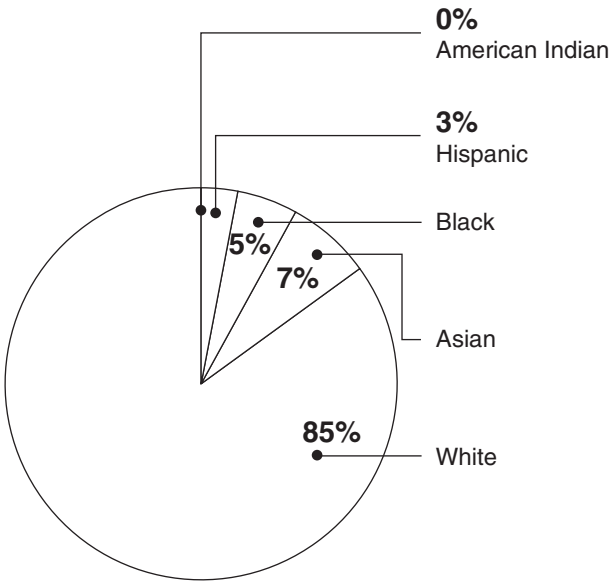
Argonne National Laboratory reports to DOE's Office of Science through the Argonne Site Office. Argonne originated from a University of Chicago laboratory that participated in the World War II effort to develop nuclear weapons and that was the location of the first controlled nuclear chain reaction. The laboratory was chartered as a national laboratory in 1946. Managed and operated by the University of Chicago, it occupied two sites—Argonne, Illinois, and a location 50 miles west of Idaho Falls, Idaho until February 1, 2005, when the Idaho location—Argonne West—became part of the newly established Idaho National Laboratory. Research at Argonne falls into five broad categories: (1) basic science in the fields of chemistry, biology, physics, mathematics, and computer science; (2) scientific facilities, including the Advanced Photon Source, for laboratory and visiting scientists; (3) development of energy sources for the future; (4) environmental management; and (5) national security in support of counterterrorism and the detection of weapons proliferation. In 2003, Argonne had 3,420 contractor employees. Figures 6 through 10 profile Argonne staff.

Figure 6: Argonne Staff by Sex, 2003



Source: GAO analysis of EEO-1 data obtained from Argonne (2003).

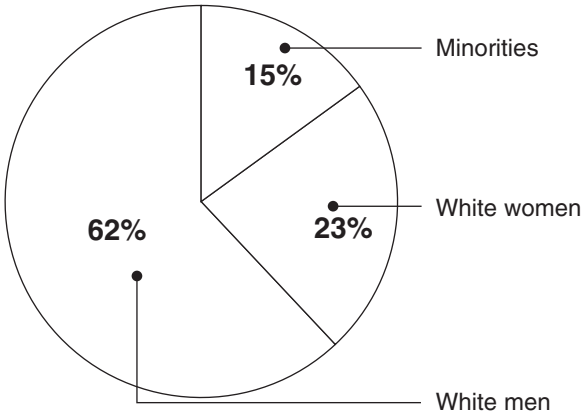
Figure 7: Argonne Staff by Race/Ethnicity, 2003



Source: GAO analysis of EEO-1 data obtained from Argonne (2003).

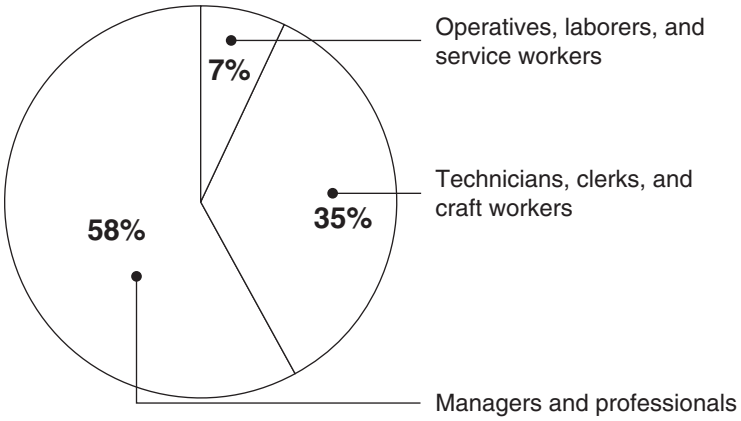
Note: American Indians comprise less than 0.5 percent of Argonne's staff.

Figure 8: Argonne Staff by White Men, White Women, and Minorities, 2003



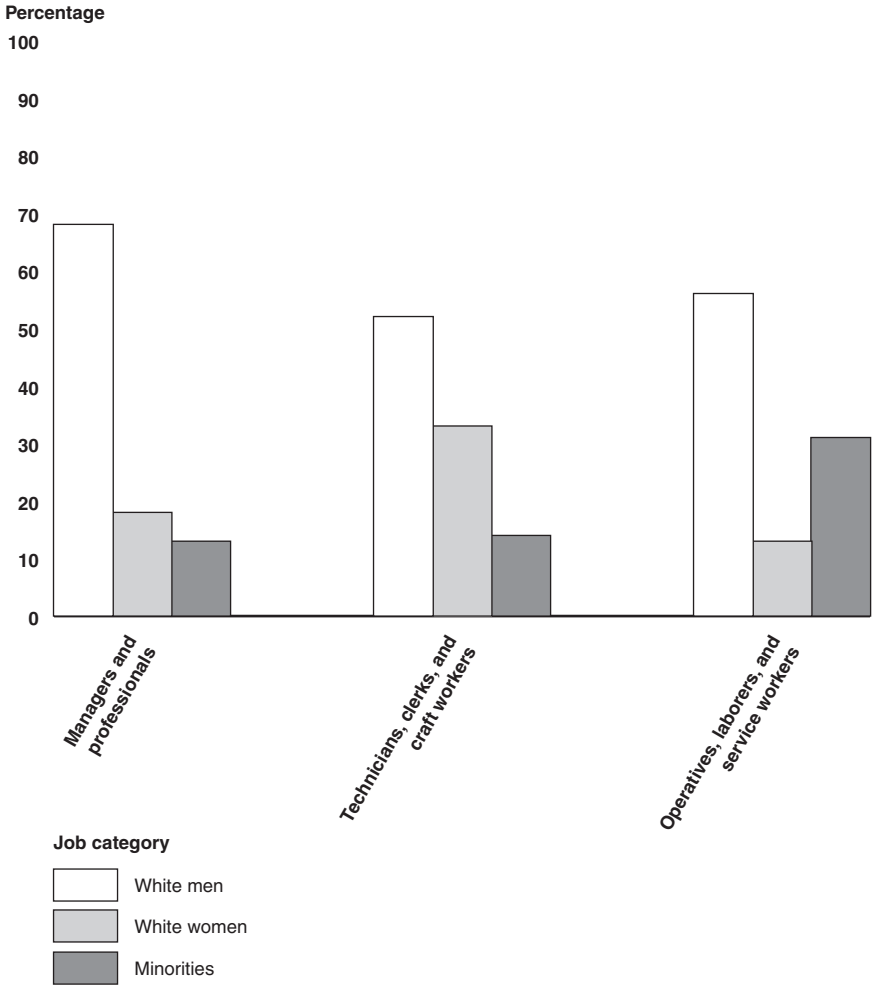
Source: GAO analysis of EEO-1 data obtained from Argonne (2003).

Figure 9: Argonne Staff by Job Category, 2003



Source: GAO analysis of EEO-1 data obtained from Argonne (2003).

Figure 10: Composition of Job Category Group at Argonne by White Men, White Women, and Minorities, 2003



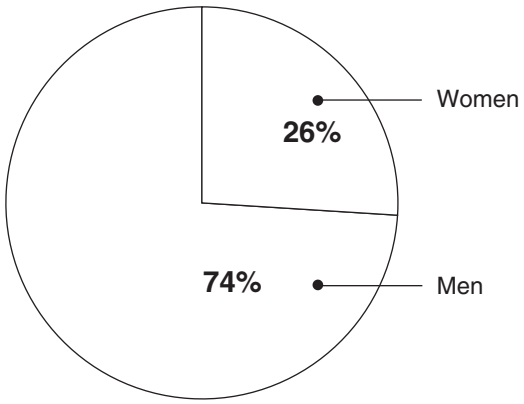
Source: GAO analysis of EEO-1 data obtained from Argonne (2003).

Brookhaven National Laboratory

Brookhaven National Laboratory, located in Upton, New York, reports to DOE's Office of Science through DOE's Brookhaven Site Office. Brookhaven was established in 1947 to promote basic research in the physical, chemical, biological, and engineering aspects of the atomic sciences and to construct and operate large scientific machines that individual institutions could not afford to develop on their own. Brookhaven is managed and operated by Brookhaven Science Associates.

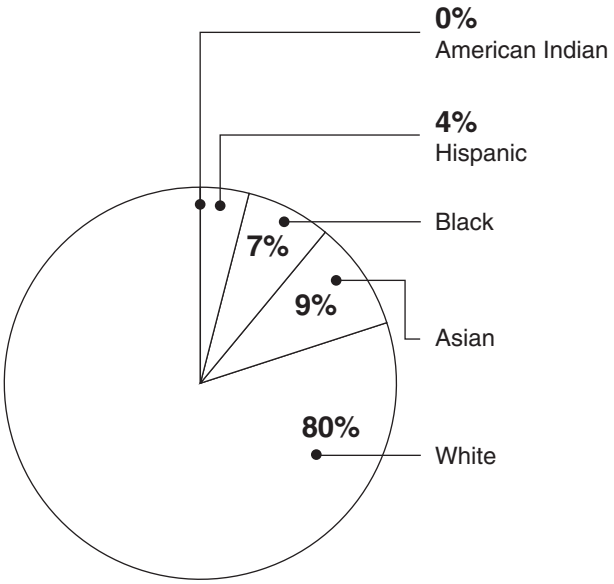
The laboratory's major programs include (1) nuclear and high-energy physics, (2) physics and chemistry of materials, (3) environmental and energy research, (4) counterterrorism and weapons nonproliferation, (5) neurosciences and medical imaging, and (6) structural biology. In 2003, Brookhaven had 2,839 contractor employees. Figures 11 through 15 profile Brookhaven staff.

Figure 11: Brookhaven Staff by Sex, 2003



Source: GAO analysis of EEO-1 data obtained from Brookhaven (2003).

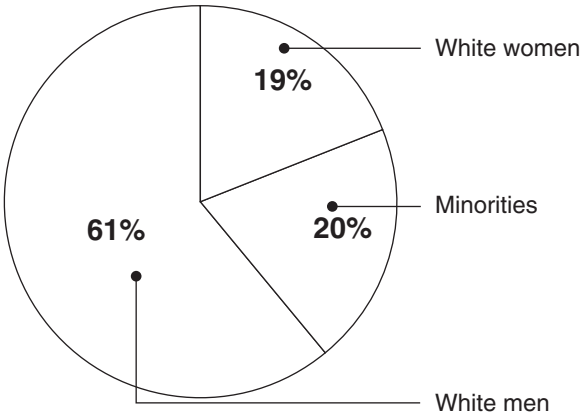
Figure 12: Brookhaven Staff by Race/Ethnicity, 2003



Source: GAO analysis of EEO-1 data obtained from Brookhaven (2003).

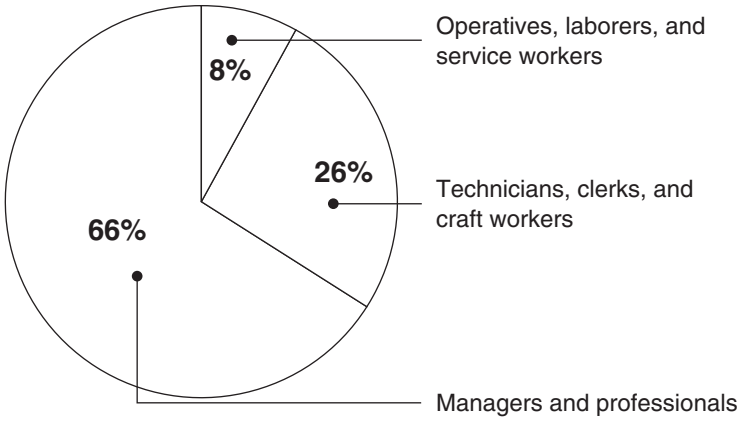
Note: American Indians comprise less than 0.5 percent of Brookhaven's staff.

Figure 13: Brookhaven Staff by White Men, White Women, and Minorities, 2003



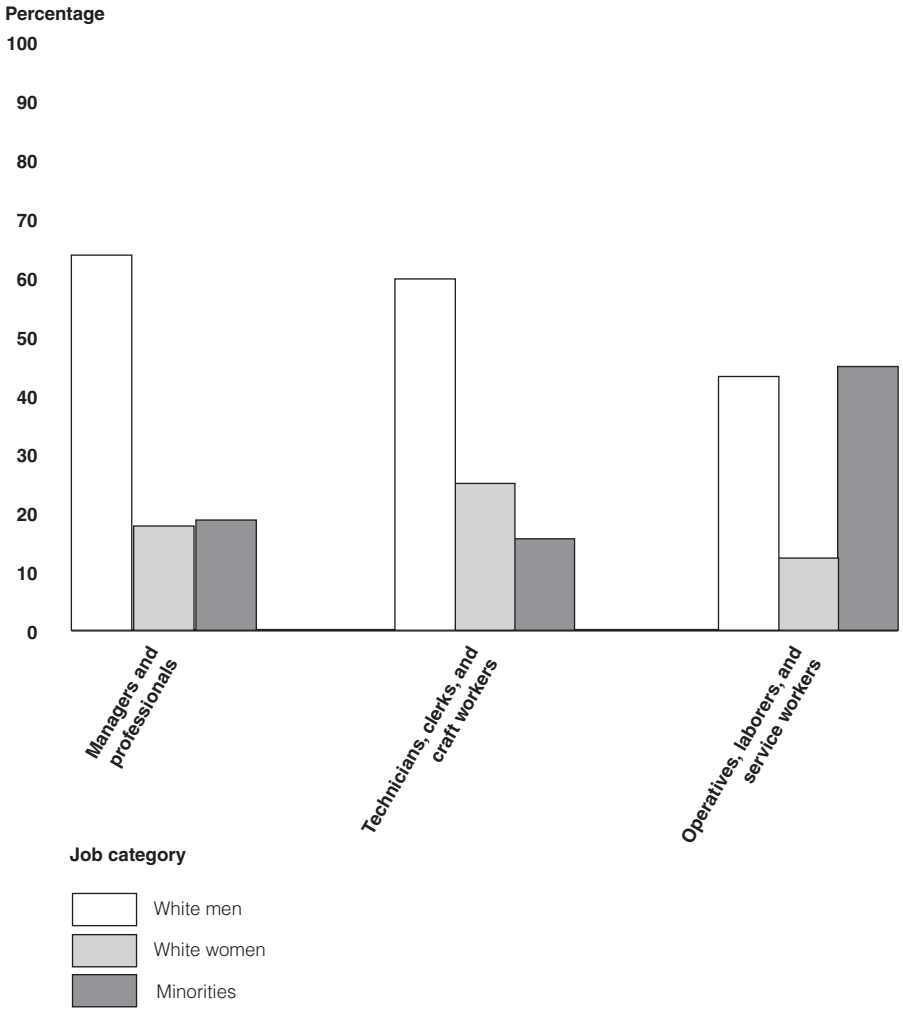
Source: GAO analysis of EEO-1 data obtained from Brookhaven (2003).

Figure 14: Brookhaven Staff by Job Category, 2003



Source: GAO analysis of EEO-1 data obtained from Brookhaven (2003).

Figure 15: Composition of Job Category Group at Brookhaven by White Men, White Women, and Minorities, 2003



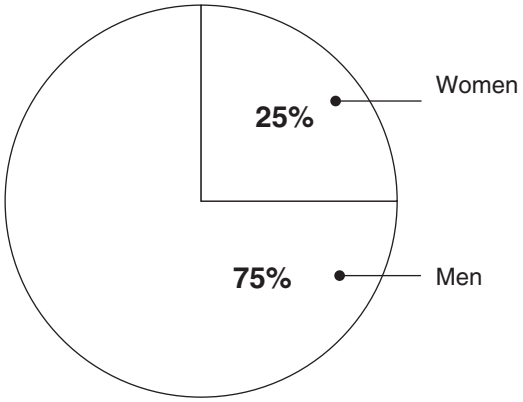
Source: GAO analysis of EEO-1 data obtained from Brookhaven (2003).

Idaho National Engineering and Environmental Laboratory

Idaho National Engineering and Environmental Laboratory, which became part of the newly established Idaho National Laboratory on February 1, 2005, is an 890-square-mile section of southeast Idaho, with offices in Idaho Falls. Idaho reports to DOE's Office of Nuclear Energy, Science, and Technology through DOE's Idaho Operations Office. Established in 1949 as the National Reactor Testing Station, the laboratory's initial mission was to

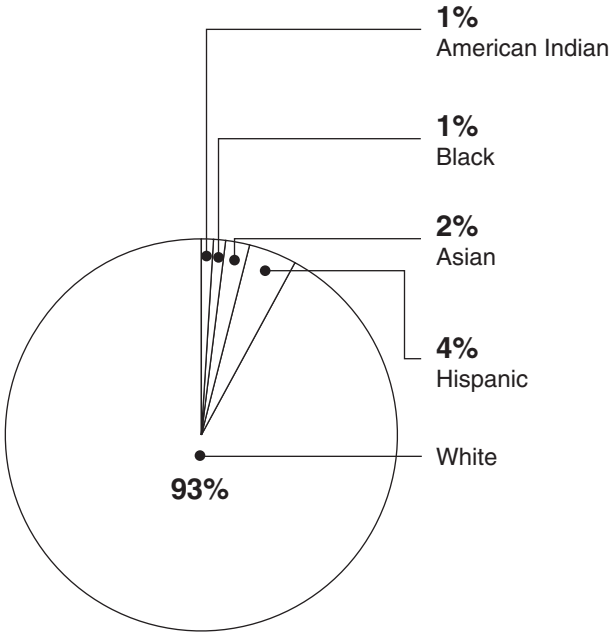
develop civilian and defense nuclear reactor technologies and to manage spent fuel. Until February 1, 2005, when Battelle Energy Alliance, LLC assumed management of operations at the laboratory, Idaho was managed and operated by Bechtel BWXT Idaho, LLC, which consisted of Bechtel National, Inc., BWX Technologies Company, and the Inland Northwest Research Alliance, a consortium of eight regional universities. The laboratory's primary missions include (1) environmental management—environmental restoration of the site, waste management, disposition of spent nuclear fuel, and high-level waste management; (2) energy programs—nuclear and radiological research and nuclear reactor design and development, fossil energy, energy efficiency, and renewable energy; (3) nonproliferation and national security; and (4) scientific research. In 2003, Idaho had 5,075 contractor employees. Figures 16 through 20 profile the Idaho staff.

Figure 16: Idaho Staff by Sex, 2003



Source: GAO analysis of EEO-1 data obtained from Idaho (2003).

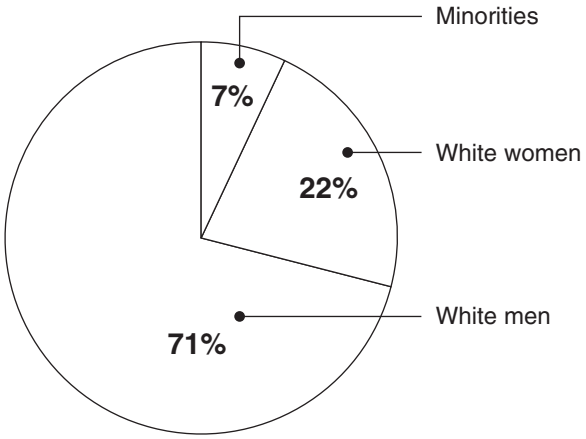
Figure 17: Idaho Staff by Race/Ethnicity, 2003



Source: GAO analysis of EEO-1 data obtained from Idaho (2003).

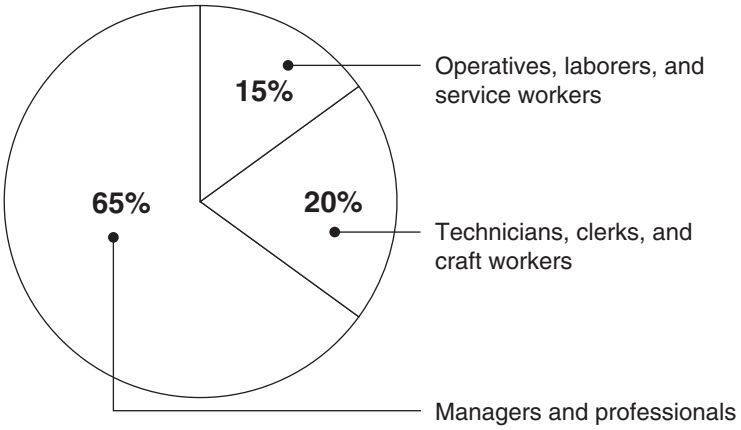
Note: Sections do not total to 100 percent due to rounding.

Figure 18: Idaho Staff by White Men, White Women, and Minorities, 2003



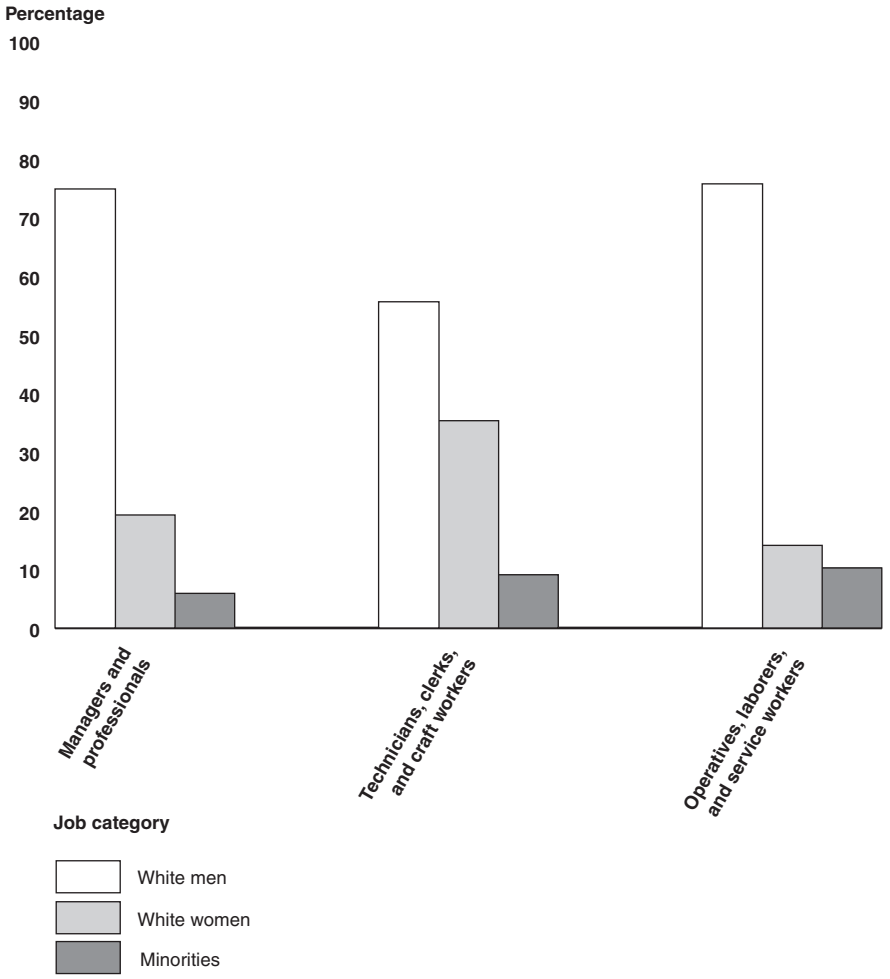
Source: GAO analysis of EEO-1 data obtained from Idaho (2003).

Figure 19: Idaho Staff by Job Category, 2003



Source: GAO analysis of EEO-1 data obtained from Idaho (2003).

Figure 20: Composition of Job Category Group at Idaho by White Men, White Women, and Minorities, 2003



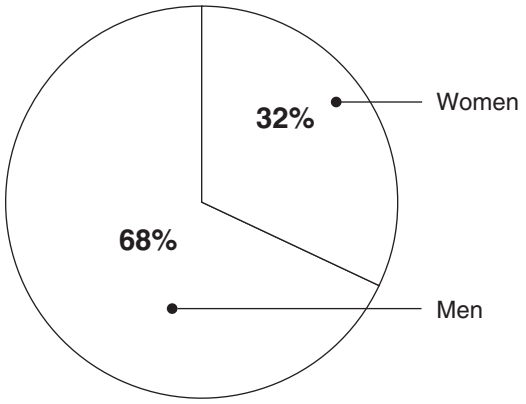
Source: GAO analysis of EEO-1 data obtained from Idaho (2003).

Lawrence Berkeley National Laboratory

Lawrence Berkeley National Laboratory, located in Berkeley, California, reports to DOE's Office of Science through DOE's Chicago Operations Office. The laboratory was established at the university in 1931 by Ernest Orlando Lawrence to advance scientific research through the development and application of the cyclotron, an instrument that accelerates charged atoms at high speed, to accomplish nuclear transmutations. It became a federal facility in 1942. The laboratory is managed and operated by the

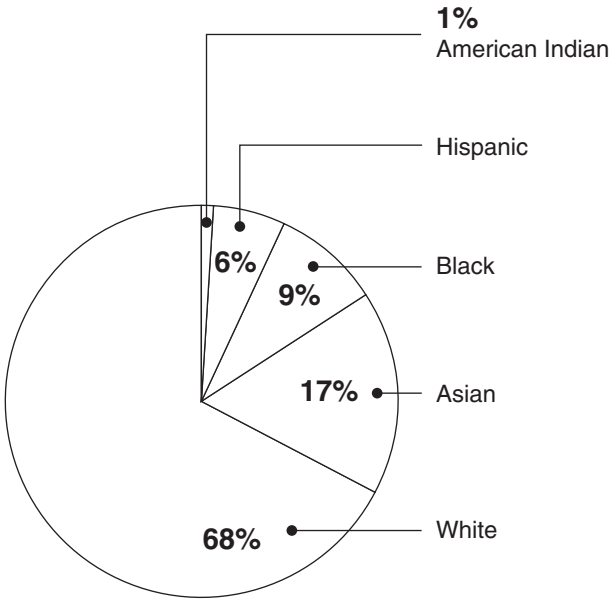
University of California and conducts research in the areas of (1) biological, physical, and chemical sciences; (2) energy resources; (3) computing sciences; (4) material sciences; and (5) environmental remediation. In 2003, Lawrence Berkeley had 2,397 contractor employees. Figures 21 through 25 profile Lawrence Berkeley staff.

Figure 21: Lawrence Berkeley Staff by Sex, 2003



Source: GAO analysis of EEO-1 data obtained from Lawrence Berkeley (2003).

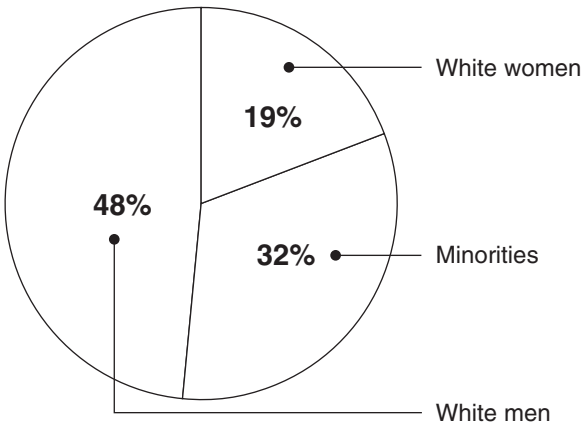
Figure 22: Lawrence Berkeley Staff by Race/Ethnicity, 2003



Source: GAO analysis of EEO-1 data obtained from Lawrence Berkeley (2003).

Note: Sections do not total to 100 percent due to rounding.

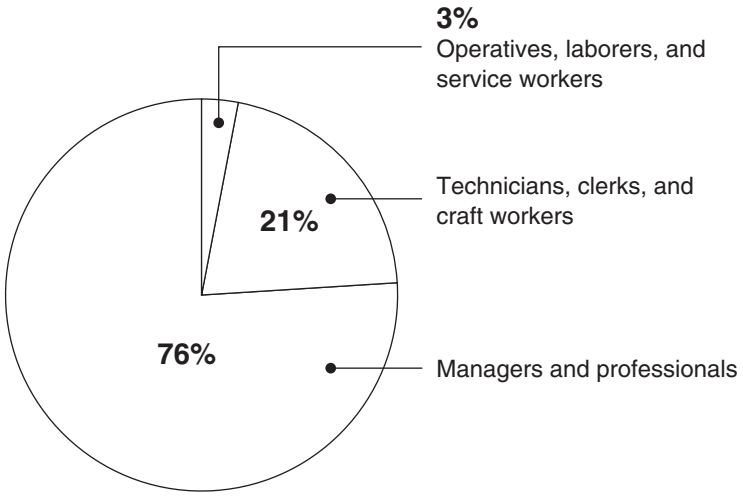
Figure 23: Lawrence Berkeley Staff by White Men, White Women, and Minorities, 2003



Source: GAO analysis of EEO-1 data obtained from Lawrence Berkeley (2003).

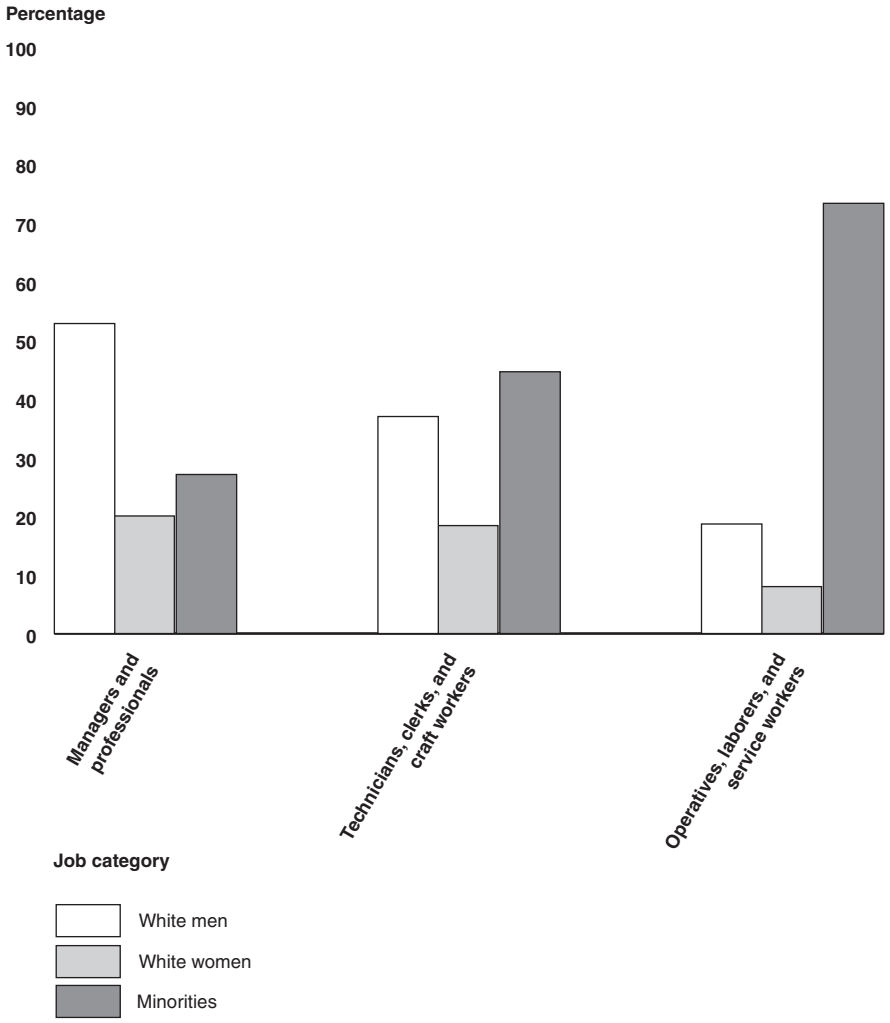
Note: Sections do not total to 100 percent due to rounding.

Figure 24: Lawrence Berkeley Staff by Job Category, 2003



Source: GAO analysis of EEO-1 data obtained from Lawrence Berkeley (2003).

Figure 25: Composition of Job Category Group at Lawrence Berkeley by White Men, White Women, and Minorities, 2003



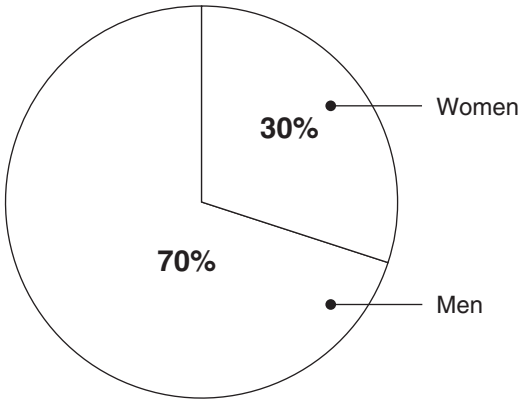
Source: GAO analysis of EEO-1 data obtained from Lawrence Berkeley (2003).

Oak Ridge National Laboratory

Oak Ridge National Laboratory, located in Oak Ridge, Tennessee, reports to DOE's Office of Science through DOE's Oak Ridge Operations Office. The laboratory was established in 1943 to develop a method for producing and separating plutonium as part of the World War II effort to develop nuclear weapons. The laboratory is managed and operated by a partnership of the University of Tennessee and Battelle. Its primary missions include (1)

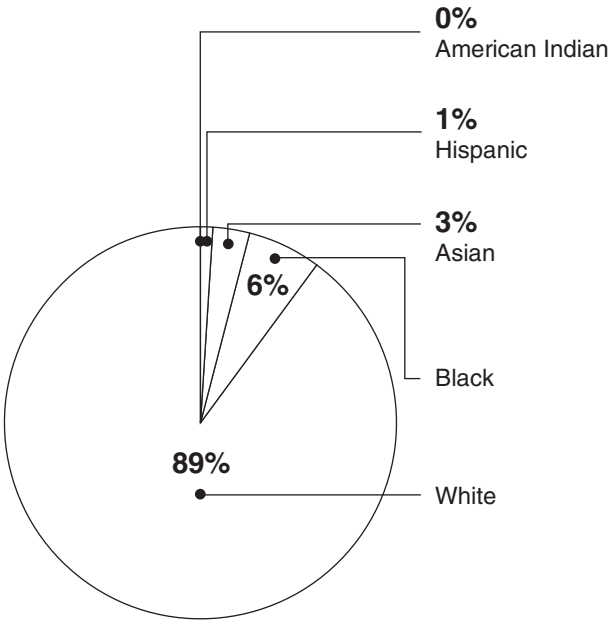
research and development of advanced materials; (2) biological and environmental sciences and technology; (3) computational science and advanced computing; (4) energy production and end-use technologies; (5) instrumentation and measurement, such as biological and chemical detection and measurement; and (6) neutron science and technology—using neutrons to study the structure and dynamics of materials. In 2003, Oak Ridge National Laboratory had 3,762 contractor employees. Figures 26 through 30 profile Oak Ridge staff.

Figure 26: Oak Ridge Staff by Sex, 2003



Source: GAO analysis of EEO-1 data obtained from Oak Ridge (2003).

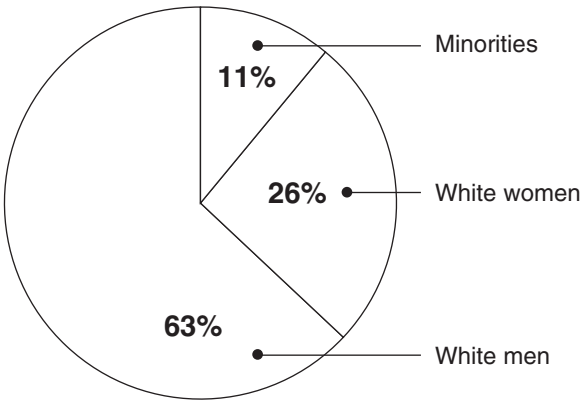
Figure 27: Oak Ridge Staff by Race/Ethnicity, 2003



Source: GAO analysis of EEO-1 data obtained from Oak Ridge (2003).

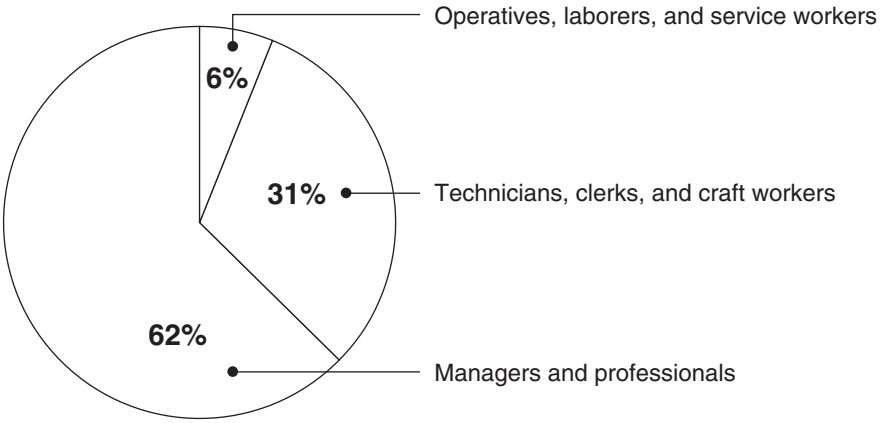
Notes: Sections do not total to 100 percent due to rounding. American Indians comprise less than 0.5 percent of Oak Ridge's staff.

Figure 28: Oak Ridge Staff by White Men, White Women, and Minorities, 2003



Source: GAO analysis of EEO-1 data obtained from Oak Ridge (2003).

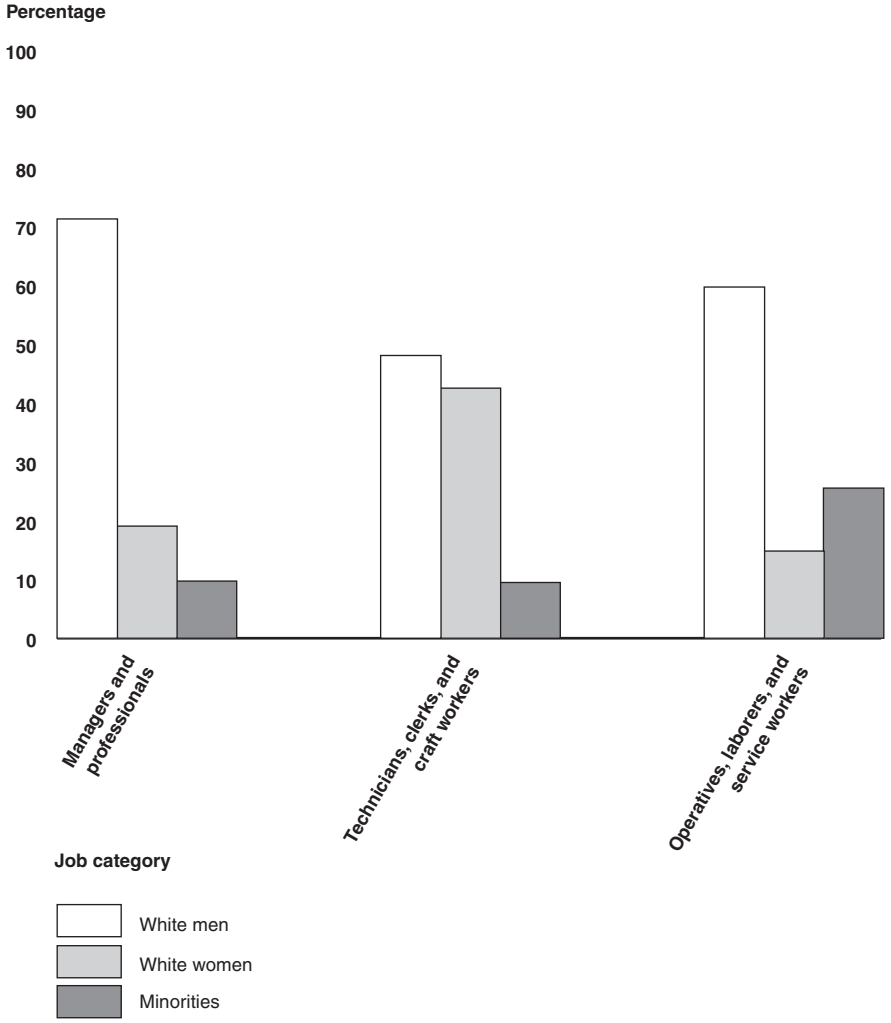
Figure 29: Oak Ridge Staff by Job Category, 2003



Source: GAO analysis of EEO-1 data obtained from Oak Ridge (2003).

Note: Sections do not total to 100 percent due to rounding.

Figure 30: Composition of Job Category Group at Oak Ridge by White Men, White Women, and Minorities, 2003



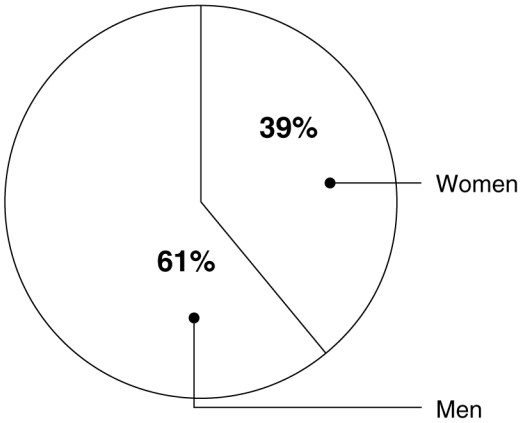
Source: GAO analysis of EEO-1 data obtained from Oak Ridge (2003).

Pacific Northwest National Laboratory

Pacific Northwest National Laboratory, located in Richland, Washington, reports to DOE's Office of Science through the Pacific Northwest Site Office. The laboratory was established in 1965 to perform research and development for DOE's Hanford site, a World War II and Cold War plutonium production facility. The laboratory's early missions included protecting the environment, fabricating reactor fuel, and designing

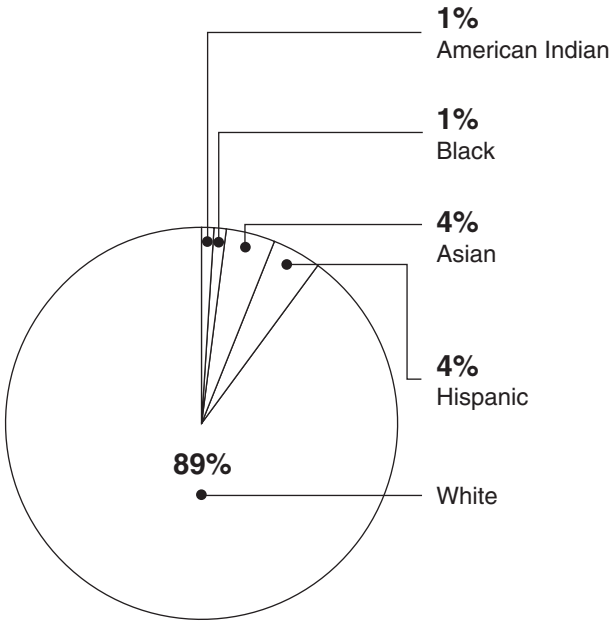
reactors. Battelle manages and operates the laboratory. The laboratory's primary missions include (1) ensuring efficient and productive uses of energy; (2) environmental research, such as developing indicators of human and ecosystem health; (3) physical, chemical, and biological science; (4) protecting and improving workers' safety and health; (5) developing software and hardware for scientific research and business systems; and (6) supporting the nation's national security effort. In 2003 Pacific Northwest had 3,380 contractor employees. Figures 31 through 35 profile Pacific Northwest staff.

Figure 31: Pacific Northwest Staff by Sex, 2003



Source: GAO analysis of EEO-1 data obtained from Pacific Northwest (2003).

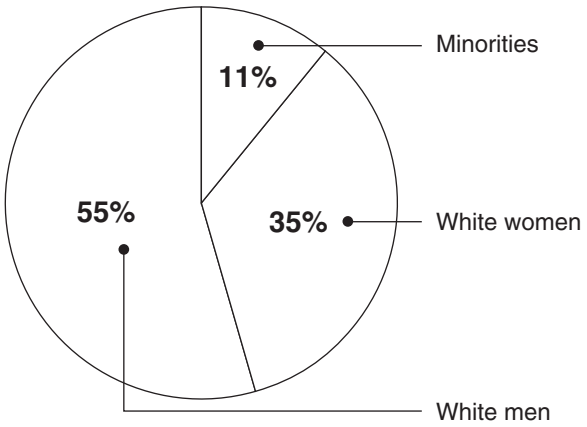
Figure 32: Pacific Northwest Staff by Race/Ethnicity, 2003



Source: GAO analysis of EEO-1 data obtained from Pacific Northwest (2003).

Note: Sections do not total to 100 percent due to rounding.

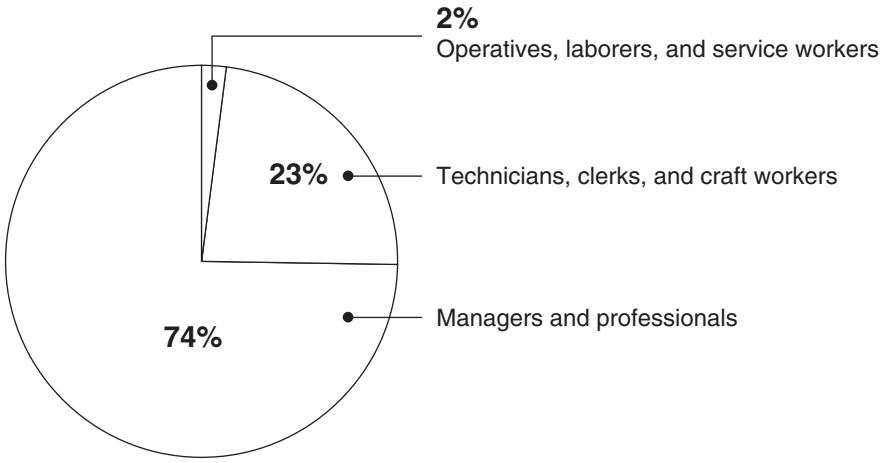
Figure 33: Pacific Northwest Staff by White Men, White Women, and Minorities, 2003



Source: GAO analysis of EEO-1 data obtained from Pacific Northwest (2003).

Note: Sections do not total to 100 percent due to rounding.

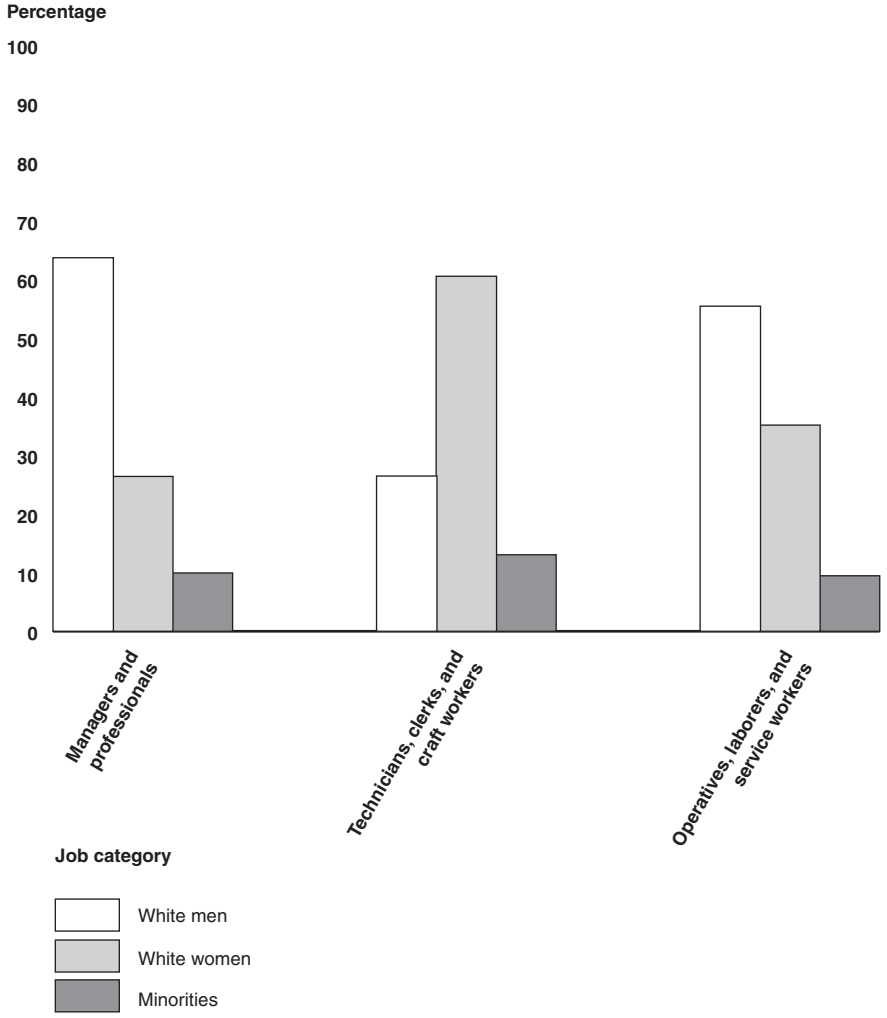
Figure 34: Pacific Northwest Staff by Job Category, 2003



Source: GAO analysis of EEO-1 data obtained from Pacific Northwest (2003).

Note: Sections do not total to 100 percent due to rounding.

Figure 35: Composition of Job Category Group at Pacific Northwest by White Men, White Women, and Minorities, 2003



Source: GAO analysis of EEO-1 data obtained from Pacific Northwest (2003).

Comments from the Department of Energy

Department of Energy
Office of Science
Washington, DC 20585

Office of the Director

January 26, 2005

Ms. Robin M. Nazzaro
Director, Natural Resources
and Environment
United States Government Accountability Office
Washington, DC 20548

Dear Ms. Nazzaro:

Thank you for the opportunity to review and comment on General Accountability Office (GAO) draft report GAO-05-190, entitled, "Equal Employment Opportunity: Information on Personnel Actions, Employee Concerns, and Oversight at Six DOE Laboratories." The Department of Energy (DOE) and its contractors take very seriously our obligation to assure that all opportunities for and conditions of employment are not predicated upon consideration of race, color, religion, sex, or national origin.

Prior to this draft report, we had the opportunity to comment on the proposed statement of facts that underlay the report. We note and appreciate that the draft report is responsive to many of those comments, both as to the statistical presentation and as to the Department's activities in valuing diversity in our workforce and those of our management and operating contractors. In our comments to the first draft report, we expressed a concern and recommended that the statistical analysis be qualified in the body of the report.

Despite this clarification, we remain concerned about the analytical method used by GAO in deriving its statistics. We note that the statistical analysis criteria used by GAO differ from the criteria used by the laboratories to both analyze and portray their diversity data. Perhaps more significantly, the criteria used differ from those employed by the Department of Labor Office of Contract Compliance Programs (OFCCP). This leads us to question the accuracy of the GAO analysis, and any conclusions drawn therefrom.

Specifically, our Idaho Operations Office employed a statistician to confirm GAO's findings. The statistician was unable to replicate the statistics shown in Table 1 and 2 in the report attributed to its management and operating contractor. This prompted an exchange between Idaho and GAO in an effort to resolve the matter. As a result, an agreement was reached to revise the figures found in these tables and also to modify the associated narrative. Thus, in Table 1: Percent Differences in Salaries for Women and Minorities, Fiscal Years 2001 though mid-2004, page 13, for Idaho and under the column, "Women compared with men," the figure of -4.8% is to be replaced by the figure of -2.0%. In addition, in Table 2: Percent Differences in Merit

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Pay Increases for Women and Minorities, Fiscal Years 2001 though mid-2004, page 14, again for Idaho found under the column, "Women compared with men," the figure of 3.7% is to be revised to show 5.3% with appropriate changes to the relevant narrative.

We are concerned that if similar vigor was applied to all the draft report's statistics, other changes may result. Other DOE laboratory contractors associated with the survey have raised similar concerns on the statistical methodology employed in preparing this report, and also the statistics presented therein. As a result, this letter conveys the Department of Energy's serious concerns regarding the statistics that appear in this report, even as qualified.

Your draft report reflects the Department's deference to OFCCP in enforcing Equal Employment Opportunity (EEO) in the contractor workforce, pursuant to amended Executive Order 11246 and its implementation of regulations found in 41 CFR 60-1.

The draft report also reflects the Department of Energy's position that its pursuit of diversity in its management and operating contractor workforce does not conflict with nor impinges upon OFCCP's enforcement authority. We expect DOE contractors to comply with their equal employment obligations, as enforced by OFCCP; however, this Department has concluded that achieving this mission is enhanced by fostering workforce diversity. Thus, our position is that efforts made accordingly are within DOE's purview, and do not present a conflict with or impinge upon the legally-sanctioned role of OFCCP.

Finally, as you may note, in pursuit of the recommendation in the previous report, DOE Weapons Laboratories: Actions Needed to Strengthen EEO Oversight, GAO-02-391 (Apr. 22, 2002), the Department's Office of Civil Rights has taken the initiative to work with the OFCCP over the last two years, in an effort to define the working relationship of our two Departments. In this regard, the Department of Energy stands ready to continue such efforts.

If you have any questions, please contact me or Dr. Joseph V. Martinez, Senior Science Advisor, Office of Science, at (202) 586-5552.

Sincerely,

Milton D. Johnson
Chief Operating Officer
Office of Science

Comments from the Department of Labor

U.S. Department of Labor

Assistant Secretary for
Employment Standards
Washington, D.C. 20210

JAN 21 2005

Ms. Robin M. Nazzaro
Director, Natural Resources
And Environment
United States Government Accountability Office
Washington, D.C. 20548

Dear Ms. Nazzaro:

This responds to your December 22, 2004 letter to the Secretary of Labor requesting comments on your proposed report entitled *Equal Employment Opportunity: Information on Personnel Actions, Employee Concerns, and Oversight at Six DOE Laboratories* (GAO-05-190).

We have reviewed the draft report and our comments are as follows:

The Department of Labor (DOL) agrees with GAO's important conclusion that the statistical analysis used in this report is inadequate to prove unlawful employment discrimination.

OFCCP investigations focus on whether the contractor has engaged in unlawful employment discrimination. If OFCCP determines that the contractor has engaged in unlawful employment discrimination, it issues a formal "Notice of Violations" which contains OFCCP's allegation of unlawful discrimination. If the contractor refuses to enter a formal settlement agreement with OFCCP to resolve the unlawful discrimination, OFCCP refers the case to DOL's Office of the Solicitor for enforcement litigation against the contractor.

Based on the formality of OFCCP allegations and the legal consequences that follow from such allegations, OFCCP uses a significantly more refined statistical analysis than the analysis used by GAO in this report. For example, when OFCCP assesses whether a contractor has engaged in systemic compensation discrimination, OFCCP compares the compensation only of employees that are deemed to be "similarly situated" under the legal standard developed by the federal courts in Title VII cases. To make such determinations, OFCCP investigators must look at the facts about employees' job duties, responsibility levels, skills, and qualifications. By contrast, GAO compared the compensation of employees through a much greater aggregation of occupations than

2

OFCCP would use in its analysis. There are also a number of other significant technical differences in the way OFCCP conducts a statistical analysis for determining unlawful discrimination that were discussed by OFCCP's Director of Statistical Analysis and GAO officials during the GAO study.

Finally, the Employment Standards Administration/OFCCP recognizes the Department of Energy's (DOE) position regarding oversight of contracts between DOE and the weapons labs, and we will continue to work to resolve this issue.

The Department appreciates the opportunity to provide comments on this report.

Sincerely,

FOR

Victoria A. Lipnic

GAO Contacts and Staff Acknowledgments

GAO Contacts

Robin M. Nazzaro, (202) 512-3841 (nazzaror@gao.gov)
Sherry McDonald, (202) 512-8302 (mcdonaldsl@gao.gov)

Staff Acknowledgments

In addition to the individuals named above, Doreen S. Feldman, Kerry Hawranek, Dick Kasdan, Carol Kolarik, Grant Mallie, Rebecca Shea, Carol Herrnstadt Shulman, Lisa Vojta, and Greg Wilmoth made key contributions to this report.

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