OFCCP Updates and Implications for Higher Ed

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Presenters

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Program Objectives

- By the end of this program, we hope that you will have gained a better understanding of:
  - The Biden Administration’s EEO and affirmative action enforcement priorities and how they impact your on-the-ground compliance efforts;
  - OFCCP enforcement trends and developments;
  - Recent and/or notable Higher Ed audits and settlements; and
  - The EEO and other impacts of COVID-19 on higher education.
Poll Question

Do you have contracts with the federal government?

- Yes
- No
- I don’t know
OFCCP at a Glance

- Part of U.S. Department of Labor (DOL)
- Responsible for enforcing federal government contractor EEO, nondiscrimination and affirmative action obligations arising under three main federal laws
  - Executive Order 11,246
  - Section 503, Rehabilitation Act of 1973
  - Vietnam Era Veterans’ Readjustment Assistance Act of 1974
- Coverage extends to educational institutions, typically through research contracts, but not grants
OFCCP at a Glance

- Basic Requirements:
  - Do not discriminate
  - Take affirmative action to ensure EEO
OFCCP at a Glance

➢ OFCCP’s authority extends to covered contractors that are Educational institutions (both public and private)

➢ Nondiscrimination requirements apply regardless of contract amount or number of employees

➢ Affirmative Action triggers:
  ➢ EO 11246 and Section 503 – 50 or more employees and a contract of at least $50,000
  ➢ VEVRAA – 50 or more employees and a contract of at least $150,000
Trump OFCCP Ed Initiatives

- Greater Focus on Higher Ed Compliance Outreach, Enforcement
  - Educational Institutions “Listening Session”
  - 2019 FAQs on “Developing and Maintaining Establishment-Based Affirmative Action Programs for Campus-Like Settings”
  - 2019 Directive and FAQs on Student Workers
  - Educational Institutional “Technical Assistance Guide”
  - Religious exemption Regulation and Directive
In FY 2020 alone, the Trump OFCCP entered into Conciliation Agreements with 8 Educational Institutions (all but two of which were financial settlements)

- Nova Southeastern University
- NYU Lutheran Medical Center
- Princeton University
- University of Connecticut
- University of Delaware
- Yale University
- New Mexico Institute of Mining and Technology (non-financial)
- University of Maryland, Baltimore (non-financial)
Poll Question

Have you been audited by the OFCCP in the last five years?

- Yes
- No
- I don’t know
Biden’s OFCCP

- Jenny Yang (Director) – Former EEOC Chair
- Dariely Rodriguez (Chief of Staff) – Lawyers’ Committee for Civil Rights Under Law
- Maya Raghu (Deputy Director, Policy) – National Women’s Law Center
- Michele Hodge (Deputy Director) – Former Mid-Atlantic Regional Director within OFCCP
- Aida Collins (Regional Director – Southeast Region) – Former Deputy Regional Director in Southwest and Rocky Mountain Region
Biden OFCCP’s Policy Priorities

• **On the Chopping Block**
  • Focused Reviews and Compliance Checks
  • Rescinded Executive Order 13950
  • Rescinded Policy on Use of EEO-1 Component 2 Data
  • Directives on how OFCCP conducts compliance reviews – Still in effect but for how long?
  • PDN Rule – announced intent to review and revise this regulation
Biden OFCCP’s Policy Priorities

- Director Yang’s Keynote Remarks at the NILG Annual Conference in August identified 3 priorities:
  1. Rebuilding OFCCP staff
  2. Revitalizing Construction Contractor Program
  3. Streamlining and modernizing processes

- Reaffirmed agency’s commitment to Functional Affirmative Action Plans (FAAPs)

- Focus on addressing long-standing systemic issues as part of return to work
Biden OFCCP’s Policy Priorities

- Systemic Discrimination – hiring, promotions, layoffs, etc.
- Gender and Race Pay Equity → compensation discrimination

Consistent with Whole-of-Government approach to Civil Rights Enforcement

- Agency Coordination
Audit Trends

• Requests for multiple years of data are coming earlier and more often

• Looking at raw wage differences by Overall Workforce, EEO Category and/or AAP job group to justify request for compensation manager interviews and more data

• Focus on outreach documentation and normal technical compliance items
AAP Verification Initiative

Coming Soon

Affirmative Action Program Verification Interface (AAP- VI) is a secure web based interface created to improve communication and the transfer of Affirmative Action Program data, between Federal Contractors and the Office of Federal Contract Compliance Programs.
Compliance Implications for Higher Ed Institutions

- Focus Remains on Educational Institutions
  - 6 Colleges and Universities on 2021 CSAL

- Scrutiny May Intensify
  - Likely rescission of Religious Exemption Rule
  - Philosophical difference between Trump and Biden Administrations on student workers
  - Greater focus on gender and race pay equity issues
Is COVID-19 a Game-Changer?

- Impact on Campuses Generally
- Impact on Government Operations
- Impact on Federal Policy Governing Workplaces
- Impact on Enforcement Activities
Takeaways

✓ Continued emphasis on Higher Ed compliance and enforcement
  ▪ Likely to pick up where prior administration left off

✓ Anticipated rollback of Higher Ed-favorable policies
  ▪ More of a “stick” approach

✓ Particular scrutiny on pay practices, systemic discrimination, especially involving race
Tips for Minimizing Risk

• Prepare timely annual AAPs to be ready to certify compliance
• Update Census Codes
• Take another look at your AAP job groups – they are key in an audit
• Review and understand your personnel activity data indicators
• Proactively review your compensation practices
Submit questions to our presenters using the Chat.
Thank You

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