

**U.S. Department of Labor
Office of Federal Contract
Compliance Programs**



November 2020

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TAB 1: AGENCY ORGANIZATIONAL OVERVIEW

Mission

The mission of the Office of Federal Contract Compliance Programs (OFCCP) is to enforce, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the federal government. For detailed information, please visit OFCCP's webpage at <https://www.dol.gov/agencies/ofccp/about>.

Authorizing Legislation

OFCCP enforces:

- [Executive Order 11246](https://www.dol.gov/agencies/ofccp/executive-order-11246/ca-11246) (EO 11246), found at <https://www.dol.gov/agencies/ofccp/executive-order-11246/ca-11246>;
- [Section 503 of the Rehabilitation Act of 1973](https://www.dol.gov/agencies/ofccp/section-503) (Section 503), found at <https://www.dol.gov/agencies/ofccp/section-503>; and
- [Vietnam Era Veterans' Readjustment Assistance Act of 1974](https://www.dol.gov/agencies/ofccp/vevraa) (VEVRAA), found at <https://www.dol.gov/agencies/ofccp/vevraa>.

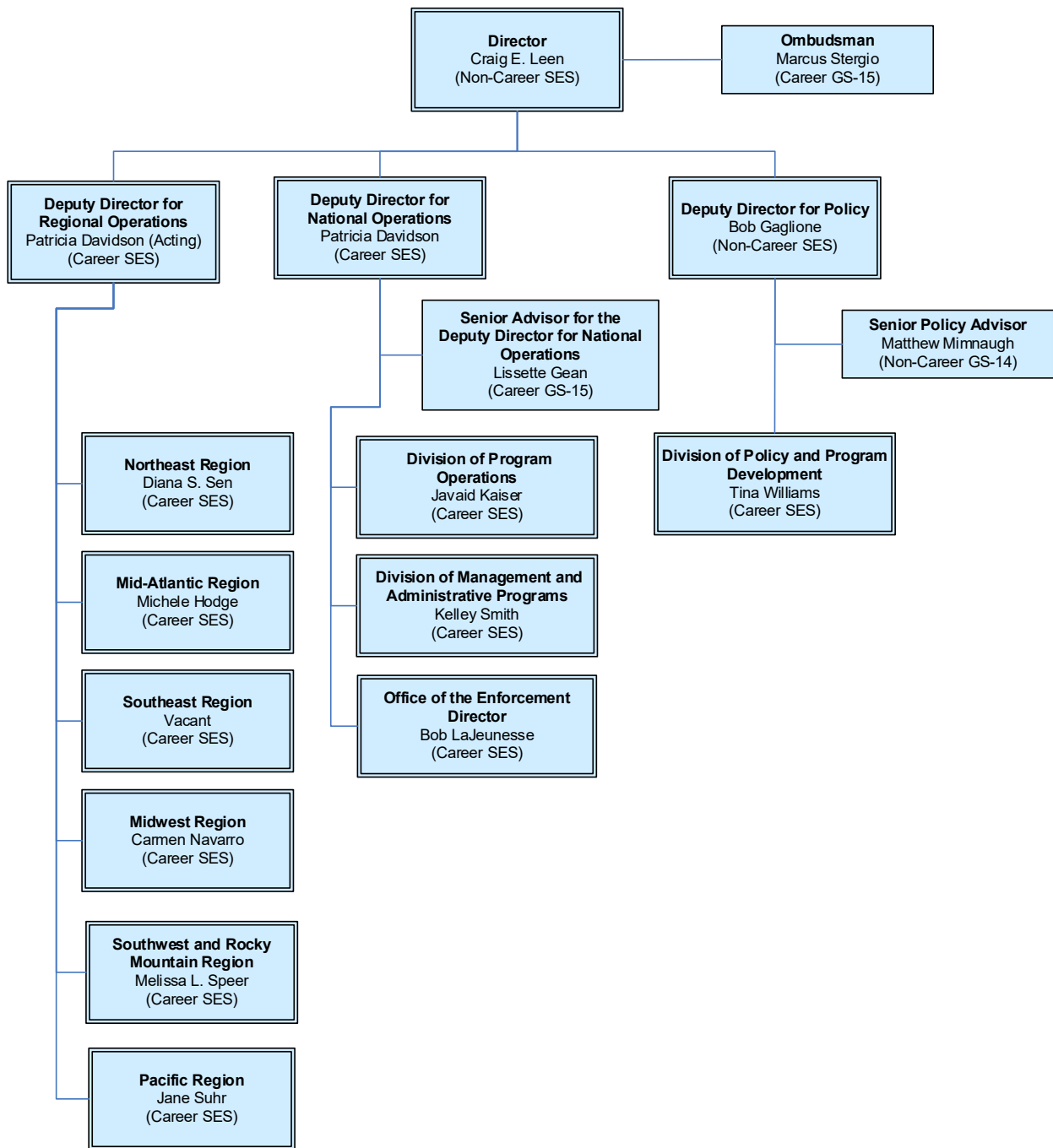
Organizational Structure

OFCCP is comprised of a national office headquartered in Washington, D.C., with three divisions and one office, and six regional offices with 48 area and district offices nationwide. The regional offices are located in Atlanta, Georgia (Southeast); Chicago, Illinois (Midwest); Dallas, Texas (Southwest and Rocky Mountain); New York City, New York (Northeast); Philadelphia, Pennsylvania (Mid-Atlantic); and San Francisco, California (Pacific). OFCCP's authorized full-time-equivalent (FTE) staff positions is 472.

Over the past three years, OFCCP filled seven Senior Executive Service (SES) level positions with personnel representing a diversity of backgrounds, experiences, skill sets, and strengths: the Deputy Director, all three Division Directors, the Director of Enforcement, and two Regional Directors (the Midwest and Pacific Regions). All were internal, DOL and OFCCP, hires. They are seasoned, career federal professionals who advanced through the management ranks. The agency has six career SES-level Regional Directors in the field. OFCCP's career Senior Executives are a cohesive, collaborative group that expertly mentors, teaches, and engages staff.

TAB 1: Agency Organizational Overview

Organizational Chart



TAB 1: Agency Organizational Overview

Workforce At-A-Glance

**DEPARTMENT OF LABOR EMPLOYMENT *
AS OF 11/1/2020 - OFCCP**

AGENCY			
Subagency	National Office	Regional Office	Total
OFCCP	58	382	440
Total	58	382	440
RACE & GENDER			
Ethnicity	F	M	Total
American Indian	1	2	3
Asian	17	19	36
Black	128	56	184
Hawaiian/PI	1	0	1
Hispanic	52	39	91
Two or more Races	3	1	4
White	56	65	121
Total	258	182	440

BARGAINING UNIT	
Local 12	40
NCFL	279
Non-BU	121
SUPERVISORY**	
Non Supervisor	349
Supervisor	91
WORK SCHEDULE	
F-Full Time	440
REGIONS	
Mid-Atlantic	52
Midwest	75
Northeast	57
Pacific	59
Southeast	84
SW & Rocky Mt.	55
Natl Ofc	58
Total	440

GRADE DISTRIBUTION	
00	12
04	1
05	7
06	6
07	15
08	4
09	3
11	4
12	225
13	98
14	53
15	12
Total	440
DISABLED STATUS	
No Disability	325
Non-targeted	85
Targeted	30
APPOINTMENT TENURE	
Indefinite	2
Permanent	438
RETIREMENT ELIGIBILITY	
Early Out	53
Eligible	86
Not Eligible	301

METRO D.C. AREA EMPLOYEES BY BUILDING		
FRANCES PERKINS BLDG	58	
Total	58	
Includes regional employees working in the D.C. area		
GRADE 13 & ABOVE		
Ethnicity	F	M
American Indian	1	2
Asian	8	10
Black	52	18
Hispanic	15	15
Two or more Races	2	0
White	21	31

* Permanent and Temporary Employees
** Supervisor count includes manager levels 2 and 4

Organizational Changes During the Past Four Years

In early FY 2021, OFCCP implemented a national office reorganization. The restructuring included (1) realigning the Ombudsman to report directly to the OFCCP Director; (2) establishing a new SES Deputy Director to oversee regional operations; (3) renaming existing career and non-career SES positions to further distinguish roles; (4) creating the Office of the Enforcement Director dedicated to carrying out enforcement program initiatives; (5) realigning the Branch of Expert Services under the new Office of the Enforcement Director; and (6) creating the Branch of Information Services to manage a variety of information administrative programs.

Starting in late Fiscal Year (FY) 2018, OFCCP began implementing a strategy of conducting more focused reviews of compliance, prioritizing larger systemic cases, and maximizing remedies to reach more contractors, and achieve speedier resolutions and corporate wide conciliations. OFCCP proactively recognizes high performing contractors, which enables the agency to blend its compliance evaluation and compliance assistance activities to work with high performing contractors toward a mutual goal of sustained, enterprise-wide (corporate-wide) compliance, outside of OFCCP's neutral establishment-based scheduling process. This approach helps OFCCP be more effective in achieving its mission to protect workers, promote diversity, and enforce the law, by focusing on contractors less likely to be in compliance. As part of this strategic approach, OFCCP clarified agency enforcement priorities, increased accountability by monitoring timeliness and quality, and enhanced the transparency and certainty among federal contractors regarding the agency's enforcement practices. In FY 2019, through effective enforcement and proactive compliance assistance, OFCCP had its most successful year in enforcement. OFCCP obtained a record \$40.6 million in monetary settlements for affected class members during FY 2019, more than \$16 million than the next highest year in FY 2017. In the same manner as enforcement, in FY 2019, OFCCP had a record-setting compliance assistance year. OFCCP answered over 4,500 Help Desk inquiries, the second highest result in a single year, and provided guidance through compliance assistance guides, answers to frequently asked questions, and stakeholder events. OFCCP continued this level of productivity in FY 2020 during the pandemic, with recoveries of \$35.6 million, the second highest year in history. During the four-year period from FY 2017 to FY 2020, the agency recovered approximately \$117 million in remedies for protected class members. The agency responded effectively to the operational challenges of working remotely and set records for compliance assistance as measured by its Help Desk inquiries and responses. In FY 2020, OFCCP responded to 4,765 total inquiries, comprised of 3,477 calls and 1,288 written questions, which is a record for total responses. These results reflect a 44 percent increase over the responses that OFCCP provided to written questions in FY 2019.

Key Leaders

OFCCP's senior leadership team includes three non-career and twelve career senior executives.

Non-Career Appointees

- **Craig E. Leen**, Director
- **Robert J. Gaglione**, Deputy Director for Policy
- **Matthew Mimnaugh**, Senior Policy Advisor

Career Executives

- **Patricia J. Davidson**, Deputy Director for National Operations
- **Patricia J. Davidson**, Deputy Director for Regional Operations (Acting)
- **D. Lissette Geán**, Senior Advisor to the Deputy Director for National Operations
- **Marcus Stergio**, Ombudsman
- **Dr. Robert M. LaJeunesse**, Director of Enforcement
- **Dr. Javid Kaiser**, Director, Division of Program Operations
- **Tina T. Williams**, Director, Division of Policy and Program Development
- **Kelley J. Smith**, Director, Division of Management and Administrative Programs
- **Diana S. Sen**, Regional Director, Northeast Region
- **Michele Hodge**, Regional Director, Mid-Atlantic Region
- **Vacant**, Regional Director, Southeast Region
- **Carmen Navarro**, Regional Director, Midwest Region
- **Melissa L. Speer**, Regional Director, Southwest and Rocky Mountain Region
- **Jane Suhr**, Regional Director, Pacific Region

TAB 2: STATE OF PLAY

Key Meetings, Decisions, and Announcements

Key Meetings

Please refer to Tab 3 calendar.

Decisions

Despite the COVID-19 pandemic, the Office of Federal Contract Compliance Programs (OFCCP) continues to be fully engaged in enforcing affirmative action and non-discrimination requirements to the approximately 25,000 federal contractors and 120,000 federal contractor establishments, in addition to covered subcontractors. The agency remains committed to addressing the challenges reported by the Department of Labor Office of the Inspector General and the Government Accountability Office, and among other actions, has begun using new methods for scheduling compliance evaluations with a focus on contractors that are at higher risk of violating OFCCP requirements. On March 20, 2020, OFCCP notified stakeholders that the agency is continuing to pursue its important mission, while making adjustments to ensure all of its activities are consistent with current public health guidelines. The agency is not going onsite physically to any contractor establishments during the pandemic, but, instead, is holding virtual meetings with contractor officials and employees. OFCCP has remained flexible in its coordination with contractors during this time, while continuing to hold them responsible for compliance to a reasonable extent under the circumstances. While teleworking, OFCCP staff have continued to be productive during the pandemic in enforcement, compliance assistance, rulemaking, policymaking, and stakeholder engagement. As the pandemic continues, leadership will be required to make decisions that impact employee health, safety, and morale. Such decisions include continuing remote work and return to on-premises work. More on OFCCP's COVID-19 response is available at <https://www.dol.gov/agencies/ofccp/coronavirus>.

OFCCP considers compliance assistance critical to ensuring contractors and subcontractors are successful in complying with the equal employment opportunity and nondiscrimination requirements under the agency's jurisdiction. While OFCCP has historically provided compliance assistance at the national and regional levels, the Government Accounting Office's (GAO) Strengthening Oversight Could Improve Federal Contract Nondiscrimination Compliance report, dated September 2016, recommended that OFCCP review its compliance assistance efforts to identify options for enhancing contractors' understanding of their nondiscrimination and affirmative action requirements. To incorporate contractors' perspectives into OFCCP's compliance assistance efforts and in response to the GAO report, OFCCP has conducted several town halls since 2017. Following these town hall sessions, OFCCP developed a Town Hall action plan with actionable items derived from the stakeholder input. The agency posts the Town Hall Action Plans on the OFCCP website so the public can monitor its progress towards the completion of the actionable items. Although OFCCP halted the in person town halls due to the COVID-19 pandemic, the agency continues to meet its compliance assistance goals by offering virtual town halls and listening sessions.

Since 2018, OFCCP entered into Memoranda of Understanding (MOUs) with several external stakeholders to further the agency's communication with the contractor community and their representatives. The agency has existing MOUs with the National Industry Liaison Group (expires on August 27, 2021), DirectEmployers Association and the National Association of State Workforce Agencies (expires on February 13, 2023), The Institute for Workplace Equality (expires on August 10, 2023), Council of State Administrators of Vocational Rehabilitation (expires on September 11, 2023), and the Council for Tribal Employment Rights (expires December 7, 2020). All the MOUs with external stakeholders state that, "[e]ither party can unilaterally terminate the MOU by providing 30-day written notice to the other party." The list of MOUs is available on OFCCP's website at www.dol.gov/agencies/ofccp/mou.

OFCCP may issue National Interest Exemptions (NIEs) that apply to both supply and service and construction contracts. An NIE provides qualifying contractors with a temporary exemption from complying with OFCCP's affirmative action and administrative obligations under Executive Order 11246, VEVRAA, and Section 503. Some of the exempted contractor obligations may include the preparation and maintenance of affirmative action programs and other recordkeeping and reporting requirements. The agency designed its NIE program specifically to allow contractors to participate in emergency recovery efforts on an expedited basis. Please note that contractors qualifying for NIEs must continue to abide by the nondiscrimination and non-retaliation obligations under OFCCP's laws. The agency continues to accept and investigate complaints of discrimination and/or retaliation against contractors covered under a NIE. Incoming leadership would need to review any existing NIEs to determine if extensions are warranted.

Policy and Regulatory Issues

Incoming leadership may face several major policy decisions within the first three months. These anticipated policy decisions and actions are as follows:

- Propose new, or revise existing, regulatory agenda items for the publication of the Administration's Spring Regulatory Agenda;
- Create stakeholder engagement plans and timelines supporting the agency's regulatory agenda;
- Review and implement pending recommendations from a GAO report on the agency's operation issued in 2016 and a report on the diversity in the information technology industry issued in 2017;
- Review and implement pending recommendations from an Office of Inspector General (OIG) report on the agency's construction contractor enforcement;
- Determine whether to open the application period for the Excellence in Disability Inclusion Award Program and complete the year of engagement with the previous award recipients, PepsiCo and CVS Health; and
- Complete implementation of recent final rules, including the TRICARE Final Rule, the Religious Exemption Final Rule, and the Final Rule on OFCCP's Resolution Procedures.

Announcements

OFCCP plays a key role in the implementation and enforcement of Executive Order 13950, “Combatting Race and Sex Stereotyping and Scapegoating.” The agency published answers to frequently asked questions at <https://www.dol.gov/agencies/ofccp/faqs/executive-order-13950>. As required in the Executive Order, OFCCP will publish a Request for Information by November 21, 2020.

OFCCP will have one ongoing regulatory action with a deadline pending in the first three months of the new Administration:

- A Notice of Proposed Rulemaking to codify a voluntary program currently authorized by the Office of Management and Budget that allows federal contractors and subcontractors to organize affirmative action programs by functional or business units.

The agency will also have an information collection request (ICR) to finalize for its Construction Program. OFCCP published for comment the Affirmative Action Program Certification Portal ICR with a deadline of November 13, 2020. The ICR is available on the Federal Register.¹

Policy Overview

Sound policy is the cornerstone of strong enforcement. OFCCP developed three rulemakings, and several sub-regulatory guidance documents and new programs over the past four years following four key principles: Transparency, Certainty, Efficiency, and Recognition.

Rulemaking

OFCCP published one final rule and two notices of proposed rulemaking during the past four years. The final rule, *Affirmative Action and Nondiscrimination Obligations of Federal Contractors and Subcontractors: TRICARE Providers*, removes TRICARE providers from OFCCP jurisdiction. This Final Rule is in the national interest and in the interest of the health of veterans and their families. OFCCP was concerned that health care providers were increasingly unwilling to accept federal contracts due to the regulatory burden they expect to incur, which may result in veterans and their families having difficulty accessing health care services.

OFCCP also published a Notice of Proposed Rulemaking titled, *Nondiscrimination Obligations of Federal Contractors and Subcontractors: Procedures to Resolve Potential Employment Discrimination*, to codify procedures that OFCCP will use to resolve potential employment discrimination. The intention of the rule is to increase clarity and ensure certainty for OFCCP’s stakeholders, and enhance the agency’s efficiency in remedying employment discrimination.

Finally, OFCCP published a Notice of Proposed Rulemaking titled, *Implementing Legal Requirements Regarding the Equal Opportunity Clause’s Religious Exemption*. The religious exemption, which is part of Executive Order 11246 and its implementing regulations, permits religious organizations to make employment decisions on the basis of religion, just as the Civil

¹ <https://www.federalregister.gov/documents/2020/09/14/2020-20105/affirmative-action-program-verification-interface-new-information-collection-requirements-comment>.

Rights Act always has. The purpose behind OFCCP's rulemaking is to clarify the scope and application of the religious exemption contained in section 204(c) of Executive Order 11246, as amended. The proposed clarifications would help organizations with federal government contracts and subcontracts and federally assisted construction contracts better understand their Executive Order 11246 obligations.

External and Internal Sub-Regulatory Guidance

- **Directives.** OFCCP issued 18 directives over the past four years to implement new initiatives focused on increasing transparency, certainty, efficiency, and recognition. The directives are part of the agency's Guidance System. They are publicly facing documents related to enforcement of the agency's laws, and all of them are available on the OFCCP website at <https://www.dol.gov/agencies/ofccp/directives>. The agency issued three of the recent directives in April 2020, as the country entered quarantine and stay at home posture due to the COVID-19 pandemic. These three directives increase accountability and efficiency in its enforcement, and maximize the effectiveness of compliance assistance resources for contractors:
 - The Efficiency in Compliance Evaluations Directive outlines the steps OFCCP will take to expeditiously resolve compliance evaluations and quickly remedy violations to benefit the workers OFCCP protects as well as the regulated community. Efficient compliance evaluations help ensure the collection of relevant evidence in a timely manner.
 - The Pre-Referral Mediation Program Directive establishes a mediation program to resolve matters before spending significant time and resources in the enforcement process.
 - The Ombuds Service Supplement Directive supplements Directive 2018-09 with additional details outlined in an Ombuds Service Protocol, which explains the principles of the Ombuds Service. Because some external stakeholders may be reluctant to contact OFCCP directly, the agency is committed to engaging in transparent communications and created the Ombuds Service as an independent mechanism to allow federal contractors, complainants, and other stakeholders to share their concerns with OFCCP or provide general feedback and recommendations to improve agency administration. To date the Ombuds Service has received more than 100 referrals and the feedback on the resolutions has been very positive.
- **Federal Contract Compliance Manual (FCCM).** OFCCP released an updated version of the Federal Contract Compliance Manual in FY 2019 to incorporate the five rulemakings that were promulgated under the prior administration as well as the new initiatives of the past four years. The FCCM is a publicly facing manual that provides evaluation and investigative procedures for OFCCP staff. OFCCP also developed a Standard Operating Procedure for the regular maintenance and update of the FCCM. The FCCM is available at <https://www.dol.gov/agencies/ofccp/manual/fccm>.
- **Compliance Assistance Guides.** In the past four years, OFCCP published several guides to help contractors comply with their equal employment opportunity obligations. OFCCP

published Technical Assistance Guides for construction contractors, educational institutions, supply and service contractors, small contractors, as well as general guides on complying with recordkeeping obligations and posting and notice requirements. All the guides are available at <https://www.dol.gov/agencies/ofccp/compliance-assistance>.

- **Frequently Asked Questions (FAQs).** During the past four years, OFCCP has issued FAQs on a variety of topics, including parental leave, arbitration, practical significance, remote employees in affirmative action programs (AAPs), student workers in AAPs, and disaggregating minority groups for placement goals, among many others. OFCCP finds that FAQs are an effective form of guidance for a variety of stakeholders. The FAQs are available at <https://www.dol.gov/agencies/ofccp/faqs>.
- **Internal Guidance.** OFCCP has issued 12 internal guidance documents, or INTs, over the past four years. INTs are part of OFCCP's Guidance System to provide enforcement-related guidance to OFCCP staff that is not public facing. OFCCP publishes the INTs on its intranet site.

Program Development

- **Excellence in Disability Inclusion (EDI) Award.** OFCCP launched a recognition program in FY 2019 in collaboration with the Office of Disability Employment Policy to recognize federal contractor and subcontractor establishments that ensure equal employment opportunity, foster employment opportunities for individuals with disabilities, and have achieved a level of excellence in their compliance with Section 503.
- **White House Initiative to End the Opioid Crisis.** OFCCP is a contributing member to the Department's working group for this White House initiative. Under one of OFCCP's legal mandates, Section 503 of the Rehabilitation Act of 1973, individuals who previously misused drugs may be considered qualified individuals with disabilities if they no longer engage in the illegal use of drugs and either have been successfully rehabilitated or are participating in a supervised rehabilitation program. In FY 2020, OFCCP published a webpage to provide information and resources to federal contractors and workers related to their obligations and rights concerning the past misuse of drugs. More information is available at <https://www.dol.gov/agencies/ofccp/drug-misuse>.
- **White House Initiative on Historically Black Colleges and Universities (HBCUs).** In FY 2020, OFCCP began leading the Departmental efforts in support of this White House Initiative. OFCCP is establishing relationships with HBCUs to provide federal contractors with resources to increase the representation of minorities and women in career-level jobs through outreach and recruitment. OFCCP has expanded this effort to include Hispanic Association of Colleges and Universities (HACU) members, Asian Pacific Islander American Association of Colleges and Universities, and Tribal Colleges and Universities (TCU). More information is available at <https://www.dol.gov/agencies/ofccp/compliance-assistance/outreach/hbcu-initiative>.
- **Opinion Letters and Help Desk.** OFCCP developed new programs in the past four years that provide fact-specific compliance assistance in the form of opinion letters and responses

to public inquiries via an online, interactive Contractor Assistance Portal (CAP). The agency published a protocol for responding to opinion letter requests on its website at <https://www.dol.gov/agencies/ofccp/opinion-letters>. CAP is part of OFCCP's Help Desk function. It allows federal contractors to register for an account and ask questions, with answers posted for the entire community of users to view. The Help Desk has a separate online inquiry function that allows anyone to submit a question to OFCCP with an answer provided privately.

Training

- In FY 2018, OFCCP retained an expert consultant to assess its national training program, and standardize its training development and evaluation processes. The assessment was completed and OFCCP implemented a new instruction design process required by the International Association for Continuing Education and Training (IACET) that includes, among other features, documented and standardized operating procedures, needs assessments, clearly defined course objectives, testing and evaluations, and recordkeeping. In June 2019, IACET recognized OFCCP as an accredited provider of adult education. Since accreditation, OFCCP has provided training to all staff on conducting focused reviews and investigating complaints of discrimination.
- In May 2020, OFCCP rolled out its Contractor Compliance Institute (CCI) to provide compliance assistance to federal contractors and subcontractors through online courses. CCI is a secure environment where users can learn how to comply with their nondiscrimination and affirmative action obligations. As of September 2020, CCI had 3,138 registered users, of which 1,736 have participated in one or more of the courses in the course catalog; a total of 508 or 29 percent of those participants have completed one or more courses.

Enforcement Overview

OFCCP conducts most of its enforcement work through neutrally scheduled compliance evaluations of federal contractors and subcontractors. During these compliance evaluations, OFCCP assesses compliance with affirmative action and nondiscrimination obligations, as amended and required by the implementing regulations of Executive Order 11246, Section 503, and VEVRAA.

OFCCP schedules about 1,500 compliance evaluations of federal contractor establishments annually. The agency develops a scheduling list to select, in a neutral manner, the establishments that will undergo a compliance review, focused review, or compliance check. The following explains how these enforcement tools differ:

- A compliance review is a comprehensive analysis and evaluation of the hiring and employment practices of the contractor (with a particular statistical focus on race and gender in selection and compensation), the written affirmative action program, and the results of the affirmative action efforts undertaken by the contractor.

- A focused review is an onsite review (though currently offsite due to the coronavirus pandemic) restricted to one or more components of the contractor's organization or one or more aspects of the contractor's employment practices. The agency also publishes compliance assistance and best practices in conjunction with these reviews. In FY 2019-FY 2020, OFCCP has scheduled four forms of focused reviews: Section 503, VEVRAA, Promotions, and Accommodations.
- A compliance check is a determination of whether the contractor has maintained records consistent with the regulatory requirements; the contractor has the option to provide the documents onsite or offsite.

OFCCP selects contractor establishments for evaluations by developing, on a regular but non-scheduled basis, a scheduling list using federal and commercial business databases, and other factors. The agency bases the total number of contractors it will review per scheduling list on its regional and district office staffing levels. OFCCP distributes the final scheduling list to each district office based on the contractor establishments' physical location within the district office's jurisdiction. The list is sorted using any of a number of neutrally-applied factors, such as alphabetical order, employee count at the establishment, contract value, or contract expiration date.

OFCCP compliance evaluations result in about 16 percent violation findings of affirmative action, nondiscrimination, or other obligations such as annual self-analysis and recordkeeping. Since the beginning of FY 2017, OFCCP compliance officers reviewed 4,700 federal contractor establishments. Collectively, those facilities employed 2.9 million workers. OFCCP also receives about 1,200 complaints annually from federal contractor employees, approximately 75 percent of which the agency refers to the EEOC under the Memorandum of Understanding between the two agencies.

In about three percent of OFCCP compliance evaluations, OFCCP uncovers discrimination and obtains remedies to make the victims of discrimination whole. Remedies in these cases typically include back pay and interest, job opportunities or salary adjustments, and injunctive relief to keep the discrimination from continuing and recurring. Since the beginning of FY 2017, OFCCP cited contractors for discrimination violations in over 267 cases. Through conciliation efforts, the agency recovered approximately \$117 million in back pay, interest, and salary adjustments for more than 141,800 workers who were subjected to discrimination.

OFCCP rarely litigates cases, as proactive compliance is always the agency's goal. When the agency cannot achieve proactive compliance, it turns to litigation. Between FY 2017 and FY 2020, OFCCP filed 14 cases with the Office of the Administrative Law Judges (OALJ) through the Office of the Solicitor, including several lawsuits against contractors who denied OFCCP compliance officers access to documents, data or worksites. As of October 1, 2020, there are seven OFCCP matters in litigation.

Enforcement Initiatives Since 2017

Comprehensive Contractor Compliance. OFCCP has jurisdiction over approximately 120,000 contractor establishments and 25,000 firms or parent companies, not including covered

subcontractors as this universe is unknown. OFCCP can evaluate only a portion of these establishments annually. To address this challenge, OFCCP increased the number and type of compliance evaluations it conducts annually. Additionally, the agency has implemented a comprehensive strategy to promote compliance across the entire contractor community that includes AAP certification, and enterprise wide settlements.

Focused Reviews. OFCCP has maximized the use of the enforcement tools available under its regulations by scheduling focused reviews. In FY 2020, OFCCP expanded its focused review initiative to VEVRAA, Promotions, and Accommodations—in addition to the Section 503-focused reviews that the agency began conducting in FY 2019. Focused reviews enable OFCCP to increase the number of reviews it conducts, reach more of its regulated universe, and protect more workers. Additionally, by focusing on a particular law or employment practice, OFCCP learns and develops best practices at the onset of the reviews and throughout the course of the set of focused reviews (e.g., Section 503-focused reviews). At the completion of each set of focused reviews, the agency will issue annual reports that include the results of the reviews and any additional best practices found. More information about these programs is available at <https://www.dol.gov/agencies/ofccp/contractors>.

Affirmative Action Program Certification Portal. All federal contractors and subcontractors are required to certify annually that they have prepared AAPs at each establishment having 50 or more employees.² Contractors make this certification in the General Services Administration's System for Acquisition Management. In early FY 2021, OFCCP anticipates launching the Affirmative Action Program Certification Portal for contractors to self-certify periodically their compliance with the AAP requirements. As part of this initiative, OFCCP is also developing a web-based portal to allow contractors to upload their AAPs for OFCCP review during a scheduled compliance evaluation.

Timely Resolution Procedures. OFCCP has introduced alternative ways to resolve its compliance evaluations, including using Early Resolution Procedures (ERP) and implementing a Pre-Referral Mediation. OFCCP issued the ERP Directive in FY 2019 to promote early and efficient resolution of compliance evaluations with discrimination indicators. These procedures allow OFCCP to conclude its investigative process quickly and provides contractors the opportunity to engage in a corporate-wide conciliation agreement. ERP provides a mechanism for OFCCP to maximize its resources for the benefit of the agency, federal contractors, and workers. Since its inception, this Program has led to 29 Early Resolution Conciliation Agreements comprising \$47.4 million in back pay, \$4.5 million in salary adjustments, 2,071 job offers, and ongoing monitoring of approximately 525,000 employees to ensure equal employment opportunity. In FY 2020, OFCCP implemented the Pre-Referral Mediation Program. This program allows OFCCP to resolve findings of discrimination efficiently prior to referrals to the Office of the Solicitor for enforcement, thereby remedying affected class members sooner.

Interagency Enforcement Collaboration. OFCCP actively coordinates with other federal enforcement and civil rights enforcement agencies to ensure the very best remedy for victims of discrimination. Under the 2011 MOU with EEOC, OFCCP established Compliance

² See Federal Acquisition Regulations part 22, subsections 22.8, 22.804, 22.13, and 22.14.

Coordination Advocates in the national office and in the field that meet semi-annually to discuss enforcement trends, current cases, and opportunities for collaboration. Since 2011, OFCCP and EEOC have engaged in hundreds of joint outreach events, participated in cross training, and collaborated on compliance evaluations and complaint investigations. OFCCP modified the current MOU with EEOC by, among other provisions, adding the U.S. Department of Justice's Civil Rights Division (DOJ-CRD) as a signatory. The Department and the agency believe the MOU will result in greater cooperation and coordination between the OFCCP, EEOC, and DOJ-CRD agencies in the implementation of Title VII of the Civil Rights Act and Executive Order 11246.

Functional Affirmative Action Program (FAAP). In 2019, OFCCP issued a revised directive to continue this program. The regulations implementing Executive Order 11246 permit federal supply and service contractors to develop AAPs based on a business function or business unit rather than AAPs based on contractor establishments. These functional AAPs or FAAPs allow the contractor to examine whether its personnel practices and affirmative action efforts are sufficient to ensure equal employment opportunity for applicants and employees of a functional or business unit, rather than a particular establishment. The updated directive requires approval by the OFCCP director, eliminates automatic renewal of contractors' FAAP agreements, and extends the period of the agreement from three to five years. FAAP agreements provide contractors with an individual point of contact for compliance assistance and guidance.

Indian and Native American Employment Rights Program (INAERP). This program strengthens workplace protections and expands employment opportunities for qualified Indian and Native American job seekers and workers. INAERP provides compliance assistance and outreach to tribal leaders, community organizations, individual workers, and companies that hold federal contracts and subcontracts. In 2017, OFCCP and the Council for Tribal Employment Rights (CTER) renewed a Memorandum of Understanding to foster cooperation and support a mutually beneficial working relationship. Through the MOU OFCCP and CTER agree to identify job opportunities for Indians and Native Americans with federal contractors. INAERP also recently published an updated webpage that includes Indian Preference Frequently Asked Questions and best practices for creating an inclusive workplace for Native Americans. More information about this program is available at <https://www.dol.gov/agencies/ofccp/compliance-assistance/outreach/indians-native-americans>.

Audits and Reports

On September 22, 2016, GAO released its final report, GAO-16-750 (available at <https://www.gao.gov/products/GAO-16-750>), entitled "Equal Employment Opportunity: Strengthening Oversight Could Improve Federal Contractor Nondiscrimination Compliance." GAO focused on OFCCP's work on supply and service contracts, and made six recommendations, including that OFCCP develop a contractor selection process that reflects contractor noncompliance risk, develop a mechanism to monitor contractors' compliance with AAP requirements, and review and assess the clarity of its contractor guidance. OFCCP has implemented four of six recommendations. The agency continues to work on implementing recommendations for improving its scheduling methodology to focus on contractors at higher risk of noncompliance, and developing a mechanism to electronically monitor compliance with the affirmative action program requirements.

On November 16, 2017, GAO released a report, GAO-18-69 (available at <https://www.gao.gov/products/GAO-18-69>), entitled “Diversity in the Technology Sector: Federal Agencies Could Improve Oversight of Equal Employment Opportunity Requirements.” GAO made six recommendations, one for the EEOC and five for OFCCP. OFCCP has implemented one of the recommendations. The agency continues to work to resolve the four pending recommendations:

- (1) analyze internal process data to make efficiency improvements for conducting compliance evaluations,
- (2) adapt scheduling methodology to evaluate contractors in industries at greatest risk of noncompliance,
- (3) examine the scheduling methodology to ensure that OFCCP schedules subcontractors for compliance reviews, and
- (4) evaluate the Functional Affirmative Action Program to assess its usefulness as an effective alternative to an establishment-based program, and determine what improvements, if any, could be made to better encourage contractor participation.

In October 2016, the OIG initiated a discretionary audit of OFCCP’s policies, procedures, and practices in the area of construction. This audit came on the heels of a comprehensive GAO audit that did not include the review of OFCCP’s work in construction. The OIG reviewed the results and remedies of OFCCP’s compliance evaluations and complaint investigations of construction contractors, plus the agency’s outreach to employees and contractors. The audit evaluated how OFCCP selected construction contractors for compliance evaluations and complaint investigations and determined if they were complying with EEO requirements. The OIG issued its final report no. 04-20-001-14-001 (available at <https://www.oig.dol.gov/public/reports/oa/2020/04-20-001-14-001.pdf>), entitled, “OFCCP Did Not Show It Adequately Enforced EEO Requirements on Federal Construction Contracts,” on March 27, 2020. The report includes two recommendations for OFCCP: (1) develop a risk-based approach to select construction contractors for EEO compliance evaluations, and (2) update participation goals for minorities and females, and implement processes to keep all participation goals current. OFCCP submitted a corrective action plan.

IT Modernization

In FY 2016, OFCCP began working with the Office of the Chief Information Officer (OCIO) to replace its legacy case management system, which tracks the status of OFCCP cases as they undergo various stages of a compliance evaluation, with a new modernized Compliance Management System (CMS). The new system addresses the agency’s previous challenges of uniformity, security of sensitive information, version control, and inter-regional collaboration, and incorporates an electronic document management component, replacing the agency’s paper-based case file system. In the summer of FY 2019, OFCCP deployed the supply and service module for CMS to all field staff. In FY 2020, OFCCP encountered some procurement issues that delayed development of the construction and complaint modules. Presently, OFCCP is on track to deploy two construction modules in FY 2021 and the complaint module in early FY 2022. OFCCP will develop and deploy additional modules, including reporting capabilities and national operations thereafter.

Key Agency Stakeholders

The incoming Administration can expect many of these stakeholders to request meetings to discuss new priorities for OFCCP:

Trade Groups

- Trade groups representing federal contractors (e.g., National Industry Liaison Group (ILG) and its local chapters, DirectEmployers Association, The Institute for Workplace Equality, U.S. Chamber of Commerce, Associated General Contractors, Equal Employment Advisory Council, Center for Workplace Compliance, Information Technology Industry Council, and American Association for Access, Equity, and Diversity)
- Trade groups representing human resource professionals (e.g., Society for Human Resource Management, National Human Resources Association, and National Association of African-Americans in Human Resources)

State Government Groups

- Associations representing state government entities (e.g., National Association of State Workforce Agencies and Council of State Administrators of Vocational Rehabilitation)

Trade Unions and Civil Rights Groups

- Trade unions (e.g., Service Employees International Union, AFL-CIO, and United Food and Commercial Workers Union)
- Civil rights/workers' rights groups (e.g., Leadership Conference for Civil and Human Rights, NAACP Legal Defense and Educational Fund, American Civil Liberties Union, Center for American Progress, and National Employment Law Project)
- Women's groups (e.g., National Women's Law Center, Institute for Women's Policy Research, American Association of University Women, and National Partnership for Women & Families)
- Disability groups (e.g., National Organization on Disability, Bazelon Center for Mental Health Law, American Association of People with Disabilities, Disability:In, and Easter Seals)
- Veterans' service organizations (e.g., Paralyzed Veterans' of America)
- Groups representing the LGBTQ community (e.g., Human Rights Campaign, National Center for Transgender Equality, Williams Institute – UCLA School of Law)

Educational Institutions

- Educational institutions serving protected classes (e.g., Historically Black Colleges and Universities, Hispanic Association of Colleges and Universities, Asian Pacific Islander American Association of Colleges and Universities, and Tribal Colleges and Universities)

TAB 3: CALENDAR

Event	Date
American Bar Association Contract Public Law Section’s Panel on Executive Order 13950	November 2020
National Employment Law Institute’s 39 th Annual Affirmative Action Briefing	November 5, 2020
Quarterly Senior Leadership Meeting	December 7 – 10, 2020
Wharton/Morgan Lewis Workplace Policy Forum	December 1, 2020
Deputy Director Speech to the Hon. William L. Todd American Inn of Court	December 16, 2020
Quarterly Senior Leadership Meeting	March 8 – 11, 2021
Els for Autism Foundation Autism Innovations and Global Impact Conference: Building a Neurodiverse Workforce	March 12, 2021
Quarterly Senior Leadership Meeting	June 8 – 11, 2021
Quarterly Senior Leadership Meeting	September 13 – 16, 2021

TAB 4: BUDGET

Office of Federal Contract Compliance Programs

BUDGET AUTHORITY AND FTE SUMMARY

(Dollars in millions)

	FY 2017 Enacted	FY 2018 Enacted	FY 2019 Enacted	FY 2020 Enacted	FY 2021 Request
Budget Authority	\$104.5	\$103.5	\$103.5	\$106.0	\$106.4
FTE	556	514	500	472	496

At-A-Glance

- The Office of Federal Contract Compliance Programs (OFCCP) is a single activity agency funded solely by an annual appropriation. OFCCP examines the employment practices of federal contractors to determine whether they comply with the equal employment opportunity and affirmative action obligations.

Budget and FTE Trends

- The agency’s budget has remained relatively stable from Fiscal Year (FY) 2013 (\$105.2 million) through FY 2020 (\$106.0 million).
- From FY 2013 the number of authorized FTE has decreased substantially each year from 729 down to its current level of 472 in FY 2020. The agency did not have the funding necessary to sustain that level of employment with relatively flat funding each year as the cost per FTE and shared services costs increased. Management strategy has been to execute their budget using less FTE than what is in their ceiling to safely cover all their non-personnel expenses.
- OFCCP had a \$5.3 million reduction (5.0 percent) in funding in FY 2013 due to sequestration. The agency reduced costs by furloughing all employees for five days, implementing a hiring freeze, canceling all performance awards, bonuses, overtime, and premium pay, and reducing travel and contract expenses.
- In FY 2018 and FY 2019, the President’s Budget requests were significantly lower due to a proposed merger with the Equal Employment Opportunity Commission (EEOC). Ultimately, this proposed merger never happened and OFCCP was funded near their customary funding levels in FY 2020.
- OFCCP did not receive any COVID-19 supplemental funding in FY 2020.
- The FY 2021 Request is for \$0.4 million more than the FY 2020 Enacted.
- OFCCP is set to transfer \$5.4 million and 4 FTE for the Shared Services initiative in FY 2020. OCIO will assume all of OFCCP’s Information Technology (IT) functions including capital planning, cybersecurity, IT strategic planning, IT portfolio and project management, IT procurement services, IT infrastructure and operations, and network services.

Upcoming Issues

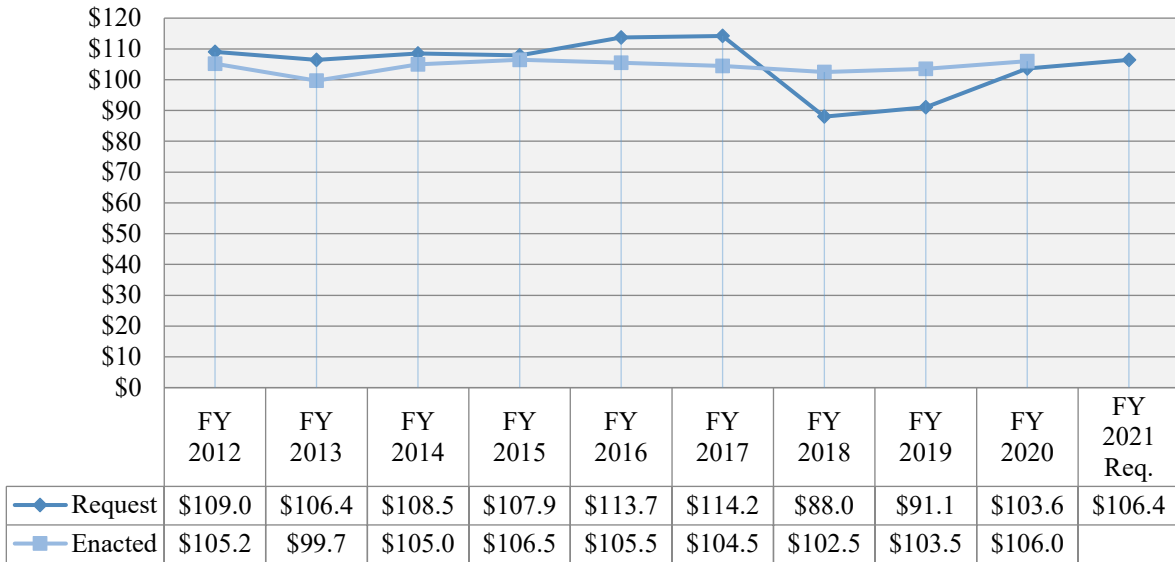
- OFCCP has had a relatively flat budget authority for the past decade and a declining onboard and FTE usage in recent years to ensure that continually increasing expenses like compensation, benefits, and IT modernization services can be covered.

Reports/Audits/Evaluations

- In 2016, the Government Accountability Office (GAO) conducted a report titled *Equal Employment Opportunity: Strengthening Oversight Could Improve Federal Contractor Nondiscrimination Compliance*. GAO concluded that OFCCP did not have reasonable assurance that it is focusing its compliance efforts on those contractors with the greatest risk of noncompliance. In response to this, GAO provided six recommendations to the OFCCP, of which four have been implemented and the other two are in the process of being addressed. One of the recommendations being addressed is for OFCCP to develop a mechanism to monitor Affirmative Action Programs (AAPs) from covered federal contractors on a regular basis.

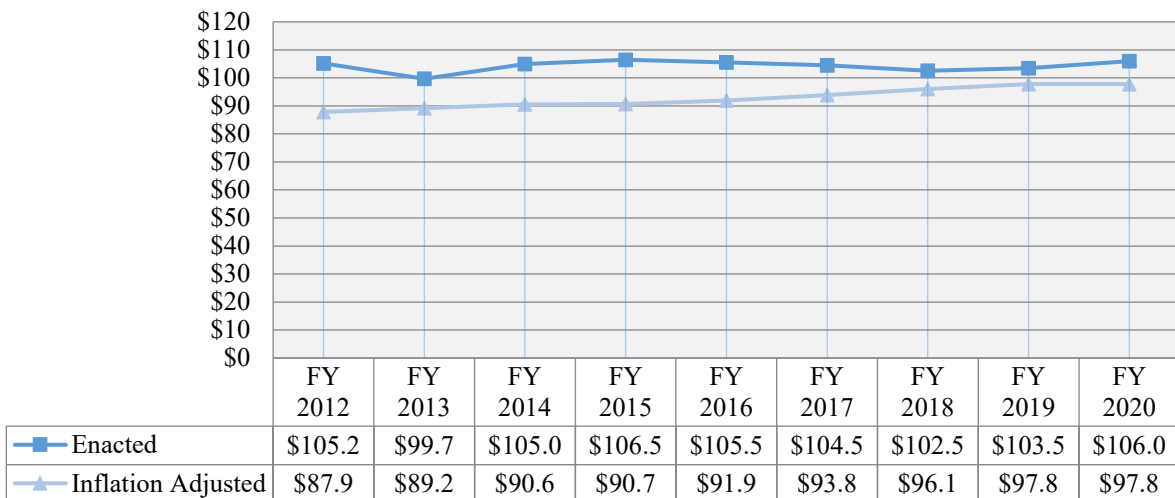
OFCCP

Request vs. Enacted, FY 2012-FY 2021
(Dollars in millions)



OFCCP

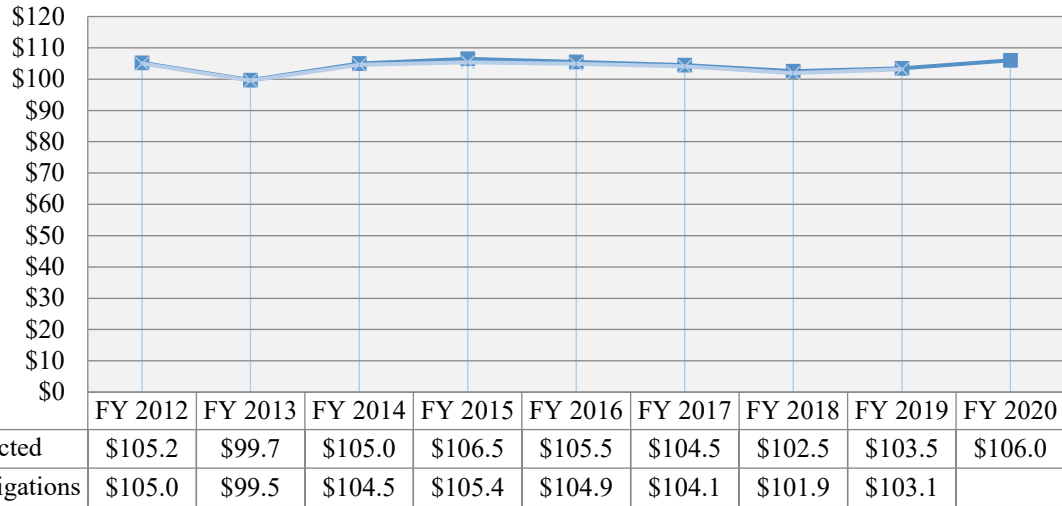
FY 2012 Inflation Adjusted BA vs.
FY 2012-FY 2020 Enacted BA
(Dollars in millions)



OFCCP

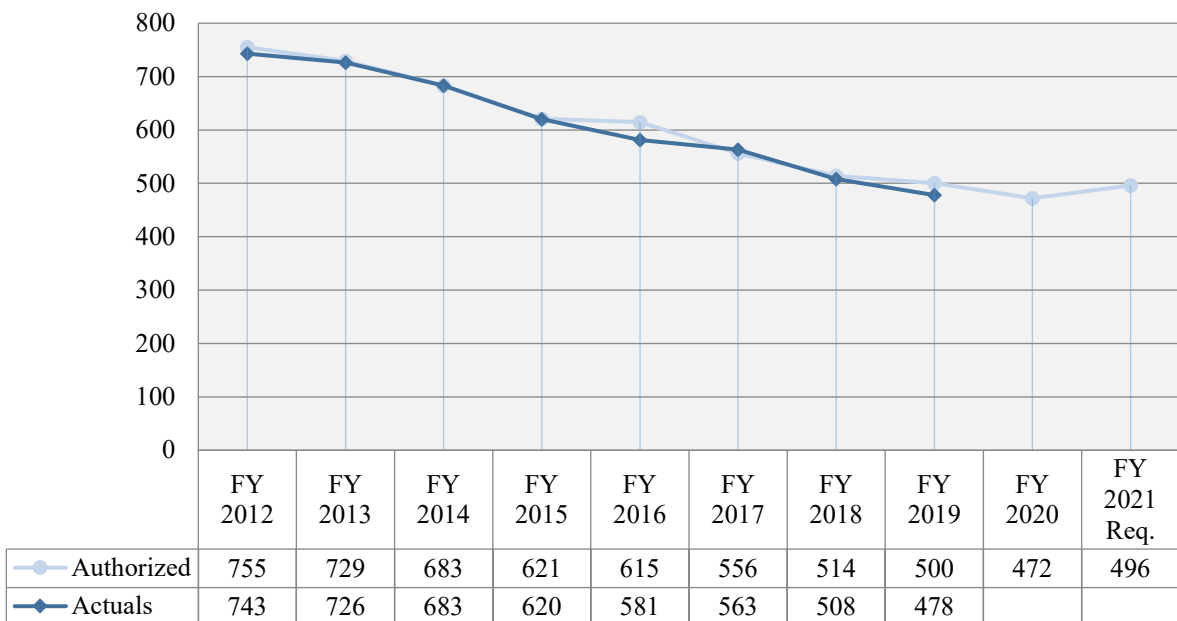
Budget Authority vs. Obligations, FY 2012-FY 2020

(Dollars in millions)



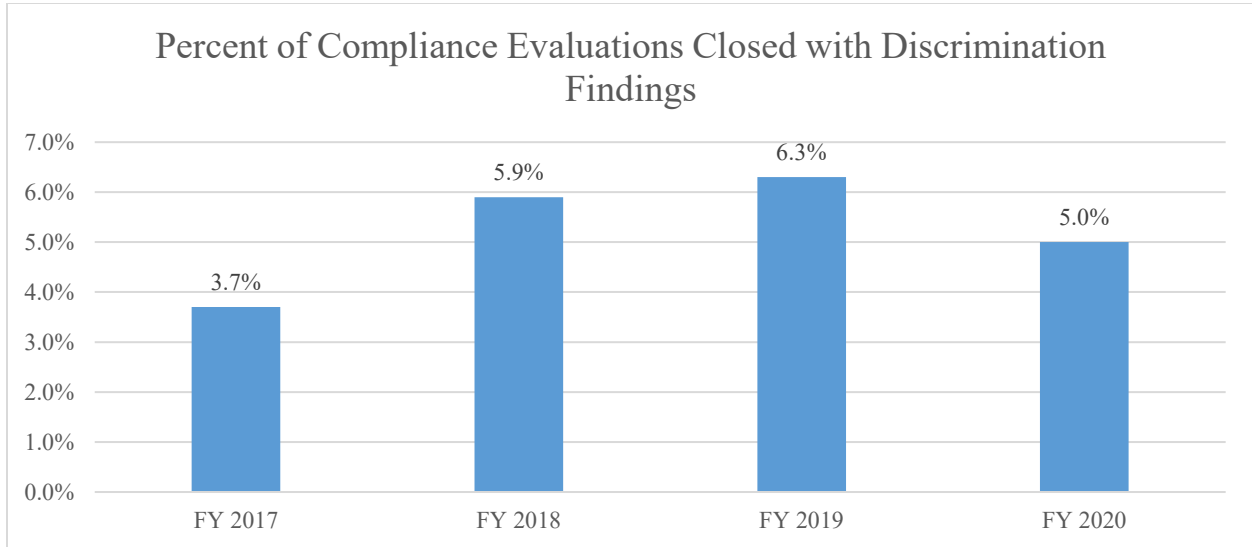
OFCCP

Authorized FTE vs. Actuals, FY 2012-2021

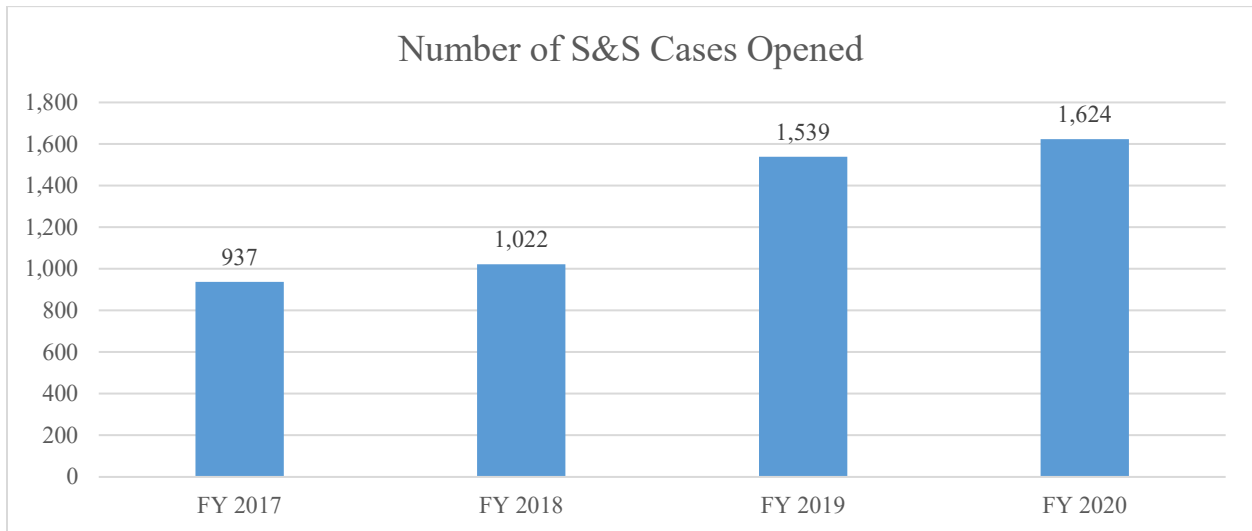


TAB 5: AGENCY PERFORMANCE

Historically, the Office of Federal Contract Compliance Programs (OFCCP) has found discrimination in approximately two percent of its compliance evaluations. From Fiscal Year (FY) 2017 through FY 2020, OFCCP has seen an increase in findings of discrimination. In FY 2019, OFCCP realized the greatest number and value of discrimination findings in its history. This progress in resolutions is attributable to the agency’s improved procedures and innovations in its resolution processes.



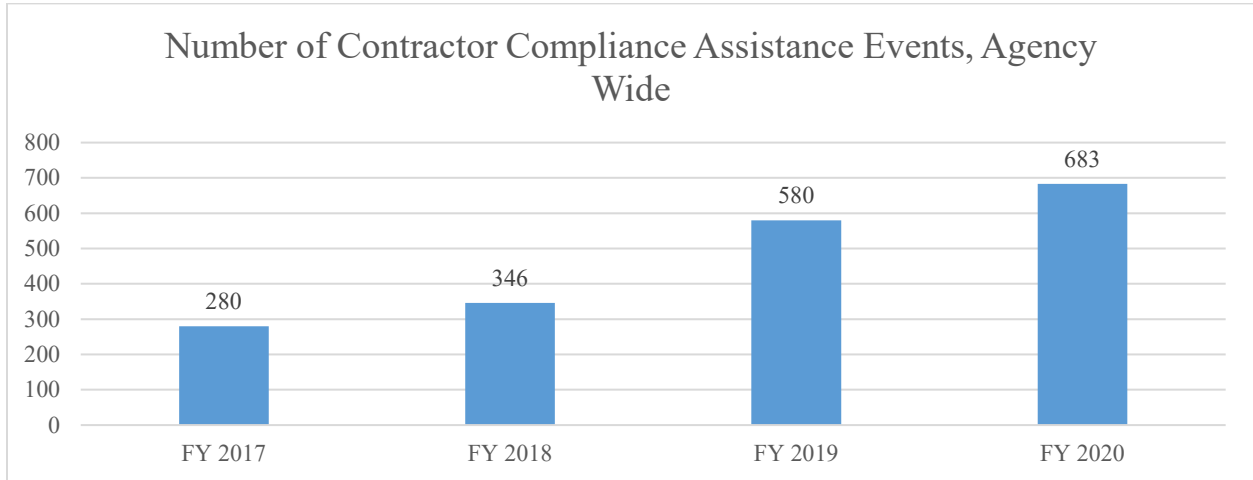
Over the past several years, OFCCP has focused on reaching a larger portion of the regulated community through compliance evaluations or compliance assistance. From FY 2017 to FY 2020, OFCCP has significantly increased the number of compliance evaluations opened.



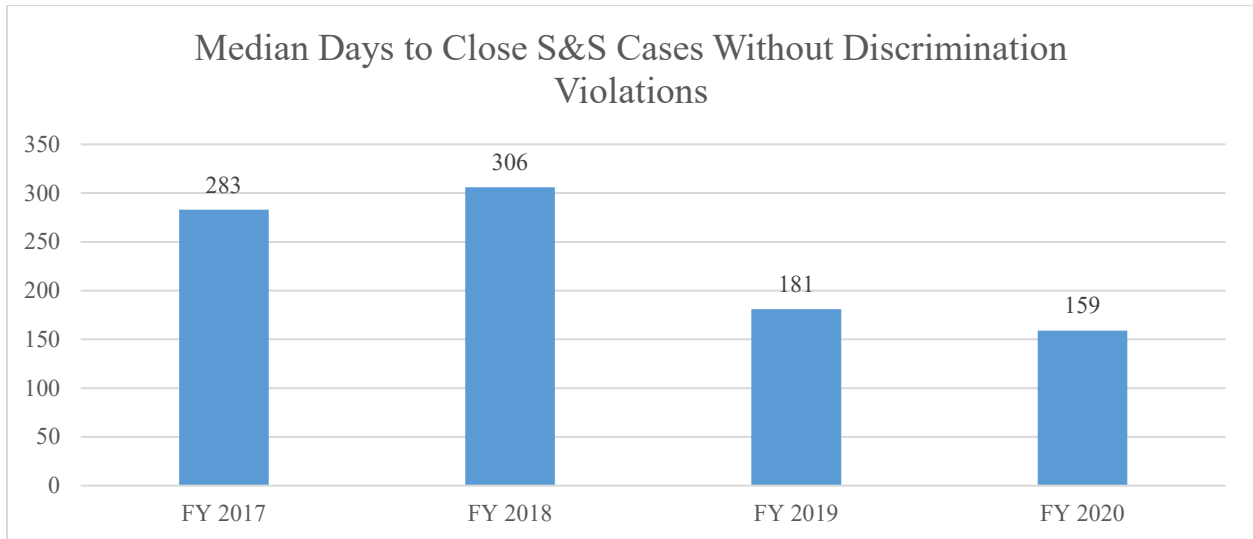
Additionally, OFCCP has conducted more meaningful outreach to contractors providing them with the tools to comply with their contractual obligations. In addition to these events, OFCCP

TAB 5: Agency Performance

launched its Contractor Compliance Institute, which provides on-demand, online courses that support contractors in understanding the obligations and developing affirmative action programs.



OFCCP has focused on improving efficiency in processing compliance evaluations. Improved procedures for conducting and resolving compliance evaluations has enabled OFCCP to see significant reduction in the median days to close its compliance evaluations. Since FY 2017 the median days to close has decreased from 283 days to 159 days.



TAB 5: Agency Performance

Finally, OFCCP has set timeframes for closing complaints filed by federal contractor employees and continues to improve on this timeliness metric. In FY 2017, 88 percent of complaints were closed timely, compared to 90 percent in FY 2020.

