



*July 6-August 27*

## **BEHIND THE CURTAIN: BEST PRACTICES AND LESSONS LEARNED FOR MANAGING YOUR ORGANIZATION DURING AN AGENCY REVIEW**

**PRESENTERS:**

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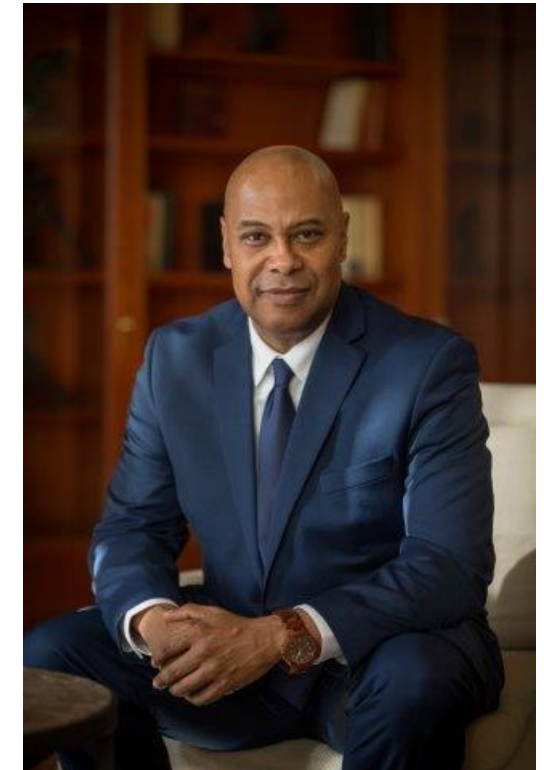
## CHERI BURGESS



**Cheri Burgess** is the Director for Institutional Equity and EEO helping to lead efforts to support Princeton University's commitment to diversity and inclusion by overseeing coordination of the University's affirmative action programs and ensuring compliance with state and federal obligations related to equal employment opportunity; developing and implementing initiatives and learning opportunities related to campus climate and inclusion; and overseeing the University's process for investigating complaints of harassment, discrimination and retaliation. With more than 25 years' experience in the areas of non-discrimination and fair employment practices, Cheri has held positions in private practice, municipal government, corporate, and higher education. In her career she has served as a labor and employment associate at Cullen and Dykman in Brooklyn, New York; an in-house staff attorney concentrating in employment and education law at the New York City Board of Education; and an EEO specialist at Home Depot U.S.A., where she advised regional leadership on employment law issues and handled EEOC charges in multiple jurisdictions in the Northeast and Mid-Atlantic regions. Cheri has a B.A. in Journalism and Media Arts from Long Island University, a J.D. from Fordham University School of Law, and is licensed to practice law in New Jersey and New York. She is a certified human resources professional (PHR), and a certified facilitator for Development Dimensions International (DDI) Learning Systems, and a member and past chair of the New Jersey Industry Liaison Group.

## SAM STARKS

**Sam Starks** is the Executive Director of Affirmative Action and Equal Opportunity Programs at Penn providing leadership ensuring that the University meets its obligations as an affirmative action and equal opportunity employer and educational institution. His responsibilities include working in partnership with colleagues across the University to advance Penn's diversity and inclusion objectives through the Office's education, outreach, advisory, and compliance roles. The Office supports the University's goals of "equalizing opportunity, enriching the educational experience of all students, and educating leaders for all sectors of society," which are embodied in the Penn Compact. Prior to coming to Penn, Sam served as the Compliance Manager in the Office of Equal Opportunity, Affirmative Action, and Disability Services at Vanderbilt University. Previously, he held a series of progressively responsible positions at Western Kentucky University, beginning with the Equal Opportunity Office, and the last of which was assistant to the associate vice president for enrollment management. As a member of the President's Center, Sam serves on numerous committees and boards at Penn including the University Council Committee on Diversity & Equity, Penn's Economic Inclusion Committee and the Division of Public Safety's Advisory Board. Sam has a B.A. from Fisk University and a M.A. from Western Kentucky University. Sam is a member of the Philadelphia Industry Liaison Group.



## AGENCY REVIEWS – DISCUSSION ABSTRACT

- Sooner or later your organization will be involved in an Agency review or investigation by EEOC, Dep't of Energy, Dep't of Education, OFCCP, etc.
- We will discuss how to manage the review within your organization:
  - Defining your role
  - Managing expectations and emotions
  - Managing internal/external communications and relationships
  - Utilizing in-house and external counsel
  - Preparing and presenting data strategically
  - Managing phone interviews and on-site reviews
  - Dealing with the aftermath

# YOU RECEIVED NOTICE OF AN AGENCY REVIEW!!! NOW WHAT?

- Acknowledge receipt and confirm that you will be point person
  - If you did not directly receive the notice, inform the Agency of your name/title and contact information to receive future communications
- Request extension, if needed
- Investigations in different regions may be inconsistent in terms of transparency, process, and application of Agency “rules”
- Under current pandemic restrictions, expect fewer onsite visits, greater efficiency and transparency

## DEFINING YOUR ROLE

- What is your role in managing the review?
- Understand your capacity and expertise – it is a shared responsibility
  - Proverbial “can’t make sugar from chips”
- Develop and sustain partnerships and collaborations
- Resist urge to shield other offices from burdensome data collection
- Form teams, delegate work strands, and have frequent check-ins

## ROLE OF LEGAL COUNSEL

- In-house and/or external legal counsel
- Clearly understanding the roles
  - Analyzing data, responding to RFIs, representation at phone/on-site interviews, etc.
- Clarification of staff roles
  - Counsel's legal guidance is critical, but preparing data and related submission documents and interpretations are *your* expertise



## MANAGING EXPECTATIONS

- Have a communication plan to keep in-house legal counsel, organizational leaders, and data partners informed of the status of the review
- Interpret Agency “speak” to the organization
- Manage emotions and fears of organizational partners
- Resource up, if needed
- Consider any complicating factors (e.g., related to pandemic restrictions)

# RESPONDING TO INFORMATION REQUESTS

- Form a core advisory group
- Evaluate availability and accessibility of organizational information
  - Hard copy files/documentation may be less accessible during pandemic
- Seek clarifications from Agency to RFIs and data requests
  - When request is unclear
  - To narrow the scope of the request
- Follow a protocol for communicating with Agency
  - By telephone or in writing? Directly or through counsel?
- Request extensions, if necessary, and explain why additional time is needed

# DATA SUBMISSION

- Limit the scope without being evasive
- Interpret data requests literally
- Determine the level of detail to provide initially and subsequently
  - How broadly or widely to interpret the request?
- Be diligent in responding to requests for privileged and/or sensitive information
- Carefully consider and be transparent in response to requests for data/policies that do not currently exist
  - May be helpful to admit non-existence, rather than create new documents
- Have the information source review the draft submission

## MANAGING INTERVIEWS – BY PHONE, VIDEOCALL, OR IN PERSON

- Narrow the scope of topics and/or witnesses for interview *before* agreeing on dates
- Try to drive the agenda and logistics - you know your organization best
- Communicate clearly and be transparent with potential witnesses and their supervisors
- Contemplate and plan the preparation of witnesses
- Participate in manager interviews and take notes
- Carefully review Agency interview notes and allow witnesses to make necessary edits

# ON-SITE REVIEWS

- Typically, an Agency comes on-site when it wants to:
  - inspect the employer's premises
  - review records
  - interview managers and employees
- On-sites may involve a “team” of Agency investigators
- On-sites can last several hours or multiple days
- Logistical preparation
  - Roadmap and Agenda (e.g., opening meeting, informational presentation, interviews, tours, debrief)
  - Location (least disruptive space for interviews, self-contained or in close proximity to restrooms, food, additional space for conferencing, storing files, etc.)
  - Consider investigators' comfort (parking, commute/timing, designate liaison, etc.)

## POSSIBLE OUTCOMES

- No Violation
  - Secure closure information in writing and ensure detailed documentation
- Violation
  - Finding of unlawful discrimination
  - Technical violation (e.g., OFCCP audit)
- Regardless of the outcome:
  - Debrief the organization on findings and process recap/highlights
  - Identify take-aways (best practices, process improvements)

## AFTERMATH

- Use the review process and findings as a road map for improvements
  - Opportunity to identify data/process gaps, shortfalls in resources, and gaps in expertise
- Communicate findings and organizational experience to all stakeholders
- Express gratitude and appreciation to all those who assisted and participated
- If outcome is negative, do not assign blame or feel that you/your team failed
- Be transparent, precise and truthful, but diplomatic in internal and external communications
- Move forward with organizational change and strengthen current processes

## BEST PRACTICES

- Stay calm!!
- Clarify roles and manage expectations
- Have a communications plan and be transparent, precise, truthful, but diplomatic
- Keep the balance – don't over-commit
- Be organized with data and document submissions
- Use audit as an opportunity identify data and process gaps, shortfalls in resources, and gaps in expertise
- Move forward with organizational change and strengthen current processes



## ADDITIONAL THOUGHTS AND INSIGHTS

What are your thoughts, insights, and words of wisdom?

# CONTACT INFORMATION



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