



# DEPARTMENT OF LABOR: SOLICITOR'S UPDATE

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## BEVERLY DANKOWITZ

- Bev Dankowitz currently serves as Associate Solicitor for the Civil Rights and Labor-Management Division (CRLM) in the Office of the Solicitor. She has provided legal services to OFCCP for over 30 years, including 10 years as OFCCP Enforcement counsel.



## KEIR BICKERSTAFFE

- Keir Bickerstaffe is the Counsel for Interpretation and Advice in the Civil Rights and Labor-Management Division in the Department of Labor's Office of the Solicitor, where he has worked since 2009. In this role, he provides legal advice on enforcement, regulatory, and other policy initiatives for several civil rights related agencies at the Department, including the Office of Federal Contract Compliance Programs (OFCCP).



## JEFF LUPARDO

- Jeff Lupardo currently serves as Counsel for Labor-Management and Civil Rights Enforcement in the Solicitor's Office. He joined DOL's Solicitor's Office in 2008 after working in the NLRB's Office of General Counsel. Jeff's practice areas includes OFCCP enforcement and advice, as well as enforcement, advice, and rulemaking work for the DOL's Office of Labor-Management Standards (OLMS).



# AGENDA FOR TODAY

- ⚙ Background on SOL
- ⚙ Policy Updates
- ⚙ Enforcement Updates
- ⚙ Q&A

# SOL BACKGROUND

- ⚙️ Independent agency from OFCCP
- ⚙️ Our role – provide legal services in the form of:
  - Litigation
  - Advice
  - Rulemaking
- ⚙️ How SOL is organized

# SOL BACKGROUND

- ⚙ Role of Regional Offices
- ⚙ Role of National Offices/CRLM
- ⚙ Role of SOL in OFCCP reviews/cases
  - Regional Offices
  - National Office - CRLM



# OFCCP POLICY UPDATES

- ⚙ Rulemaking Agenda
- ⚙ Recent Directives
- ⚙ Focused Reviews
- ⚙ Pending ICR Packages
- ⚙ Other Guidance
- ⚙ EEO-1 FOIA Litigation

# RULEMAKING AGENDA

## ⚙️ TRICARE

- ⚙️ Effective Date: August 31, 2020

## ⚙️ Religious Exemption

- ⚙️ Developing Final Rule

## ⚙️ Resolution Procedures

- ⚙️ Developing Final Rule

# RECENT DIRECTIVES

- ⚙️ DIR 2020-01 Spouses of Protected Veterans
- ⚙️ DIR 2020-02 Efficiency in Compliance Evaluations
- ⚙️ DIR 2020-03 Pre-Referral Mediation Program
- ⚙️ DIR 2020-04 Ombuds Service Supplement



# FOCUSED REVIEWS

## ⚙ Section 503

- ⚙ Note: Updated self-id form implementation date is August 4, 2020

## ⚙ VEVRAA

- ⚙ OFCCP expects to begin scheduling VEVRAA focused reviews in the Summer/Fall of 2020.

## ⚙ Accommodations

- ⚙ Religious
- ⚙ Disability

## ⚙ Promotions

# PENDING ICR PACKAGES

## ⚙ Recently Cleared:

- ⚙ Supply & Service: approved April 2020
- ⚙ VEVRAA Recordkeeping: approved April 2020
- ⚙ Section 503 Recordkeeping: approved May 2020
- ⚙ Construction Compliance Check: approved April 2020
- ⚙ Complaint Form: approved May 2020

# OTHER GUIDANCE

- ⚙ Opinion Letters
- ⚙ Any late-breaking developments...



# EEO-1 FOIA LITIGATION

- ⚙ C.D. Cal Decision on December 10, 2019
  - ⚙ EEO-1 Type 2 (consolidated) data is not commercial, thus cannot be withheld under FOIA Exemption 4
  - ⚙ Government did not appeal, but one of the submitters has moved to intervene; case still ongoing
- ⚙ Going forward



# OFCCP ENFORCEMENT UPDATES

- (1) CASES PENDING WITH THE ARB
- (2) CASES PENDING WITH THE OALJ
- (3) OFCCP DEFENSIVE LITIGATION

## OFCCP V. ENTERPRISE, RAC

- On July 17, 2019, the ALJ issued a recommended order finding that Enterprise discriminated against African-American applicants for its management trainee program over a ten-year period.
- ⚙ The recommended order required that Enterprise pay \$6,645,444 in lost earnings and benefits to the class, including updated interest. The ALJ also recommended that Enterprise must extend job offers to 182 class members.
- ⚙ Enterprise appealed the ALJ's decision by filing Exceptions with the ARB to which OFCCP filed its Response. The parties await a decision.



# OFCCP V. WMS

- ⚙ On May 12, 2020, the ALJ issued a recommended order finding that WMS committed systemic hiring discrimination against White, African-American, Asian, and American Indian/Native laborers in favor of Hispanic laborers. The ALJ awarded \$780,998 in back pay and interest to the non-hired workers.
- ⚙ The ALJ also found that WMS committed systemic compensation discrimination against female laborers based on their gender and African-American and White laborers based on their race/national origin based on the hours assigned and compensation rates. The ALJ awarded \$179,907 in back pay and interest for the compensation discrimination.
- ⚙ The parties are currently briefing merits of the ALJ's recommended decision before the ARB. Briefing will be complete in November 2020.

# MATTERS PENDING BEFORE THE OALJ

- ⚙️ OFCCP v. Potomac Abatement – complaint filed against construction sub-contractor for alleged hiring and compensation discrimination, in addition to alleged record-keeping violations.
- ⚙️ OFCCP v. JP Morgan Chase – complaint alleged systemic compensation discrimination against female employees in certain job groups.
- ⚙️ OFCCP v. Oracle America – complaint alleged systemic compensation discrimination. The matter has been bifurcated (liability stage and remedy stage). Liability trial conducted in December 2019 and has been fully briefed to the ALJ.

## MATTERS PENDING BEFORE THE OALJ (CONT.)

- ⚙️ OFCCP v. Concentrix – this matter was originally filed against Convergys, which is now known as Concentrix. The complaint alleges that Concentrix has denied OFCCP access to records. Specifically, Concentrix has not responded to OFCCP's scheduling letters. This case raises Fourth Amendment issues.
- ⚙️ OFCCP v. TIAA – complaint alleged systemic compensation discrimination against female and African-American employees in certain job groups.



## ORACLE AMERICA V. OFCCP, 1:19CV3574 (D.D.C.)

- ⚙ This is a defensive suit in which Oracle filed suit challenging the validity of the administrative enforcement scheme under E.O. 11246 and its implementing regulations under the U.S. Constitution and the Administrative Procedure Act.
- ⚙ In such matters, OFCCP/DOL is represented by DOJ in Federal court litigation.
- ⚙ The parties are currently briefing cross-motions for summary judgment. Briefing is expected to conclude in September 2020.

# QUESTIONS AND ANSWERS

Thank you for participating.

# SAVE THE DATE!

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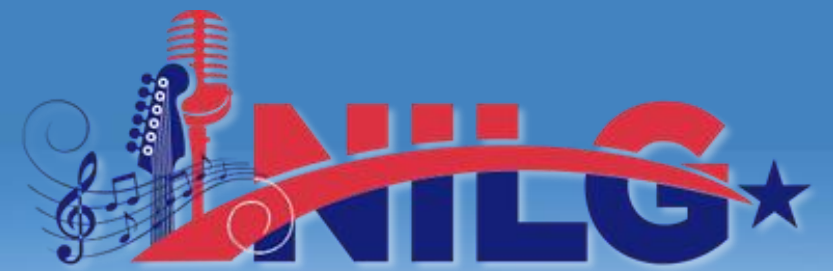
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