



# 2024 OFCCP Developments

What Federal Contractors Need to Know for 2025

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December 4, 2024



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# Today's Agenda



- Executive Orders
- 2024 OFCCP Directives/Notices
- OFCCP activity in 2024
- Noteworthy Developments in 2024
- AAP Areas to Focus on in 2025
- What to Expect in 2025

# Recently Issued Executive Orders and Reminders on Older Regulations

EO No.	Title	Effective Date	Comments
13658	<b>Establishing a Minimum Wage for Contractors</b> <ul style="list-style-type: none"> <li>Min. wage increases to \$13.30 and tipped employees min. cash wage of \$9.30, <u>eff. 1/1/2025</u> per FR 9/30/2024 publication</li> </ul>	Contracts entered into/modified on or after 1/1/2015	<i>Applies only to certain types of federal government contracts; superseded 1/30/2022 by EO 14026 to extent inconsistent with 14026</i>
14026	<b>Increasing the Minimum Wage for Federal Contractors</b> <ul style="list-style-type: none"> <li>Min. wage increases to \$17.75 for both non-tipped and tipped employees effective <u>1/1/2025</u> (per FR 9/30/2024). The distinction between non-tipped and tipped employee minimum wages was eliminated as of 2024.</li> </ul>	Contracts entered into/extended on or after 1/30/2022	<i>Applies only to certain types of federal government contracts</i>
14110	<b>Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence</b> <ul style="list-style-type: none"> <li>Requires federal agencies to undertake action regarding AI in areas such as safety and security standards, privacy protections, advancing equity and civil rights, supporting workers, etc.</li> </ul>	Published October 30, 2023 with various federal agencies given deadlines for specific activities within 30 to 270 days	<i>US Department of Labor has issued some guidance as has OFCCP</i>

# 2024 OFCCP Directives/Notices



## OFCCP Directives issued in 2024

- **Directive 2024-01 Expedited Conciliation Procedures**
  - Procedures for expedited conciliation with option to enter Expedited Resolution Conciliation Agreement (ERCA)
  - Rescinds and Replaces Dir 2019-02 Early Resolution Procedures (ERP)

## Regulatory changes

- None

# 2024 OFCCP Directives/Notices



## Pending Approval of Data Collection Forms, Notices, etc.

- **Uniform Guidelines on Employee Selection Procedures (UGESP)** up for three year renewal - comments due by 12/31/2024 (no changes)
- **EEO-1 Component 1**
  - Last year EEOC was only given a 1-year approval for the 2023 report filed in spring 2024
  - EEOC will have to request either a 3-year term or 1-year extension. New race/ethnicity categories probably driving this at OMB.
- **Contractor portal** - OFCCP filed for renewal of authority for portal which expired August 31, 2024. Comments were due by June 12, 2024.
- **EEO-1 Type 2 (Consolidated) FOIA Request Notice**
  - Two FOIA requesters: University of Utah, and As You Sow (non-profit)
  - Request for reporting years 2021 and 2022 but OFCCP only has 2021
  - Objections due by December 10, 2024
  - See OFCCP website: [www.dol.gov/agencies/ofccp/submitter-notice-response-portal](http://www.dol.gov/agencies/ofccp/submitter-notice-response-portal)

# OFCCP 2024 Activity



## Compliance Reviews (audits) for Supply and Service contractors *continue to be lower*

- 771 closed in most recent year, FY 2024 (10/1/2023 to 9/30/2024) vs. 898 in prior fiscal year
  - Lowest in many years. For example, 1,318 CAs in FY 2020.
  - 166 Conciliation Agreements (CA) signed vs. 122 CAs in prior year
  - 22% of reviews ended with CA
- 150 Construction Contractor audits closed in FY 2024
  - Compared to 175 in the prior fiscal year which are not included in above Supply and Service counts
  - 51 Conciliation Agreements or Consent Decrees
  - 34% of reviews ended with CA or CD

# OFCCP 2024 Activity: Financial Settlements



## OFCCP collected for class members by Fiscal Year

- FY 2024 \$12.1 million
- FY 2023 \$17.3 million
- FY 2022 \$11.8 million

## Some significant settlements in FY 2024

### *Hiring*

- Deere & Co. \$1.1 million - Blacks, Hispanics
- University of Texas SW Medical Center \$900k - Blacks
- Caterpillar \$800k - Blacks
- Olin \$630k - Blacks, females
- GE Aerospace \$443k - females

### *Compensation*

- State Street \$4.2 million - females
- Pennsylvania State University \$703k - females
- Michael Baker International \$122k - females
- Siemens \$82k - females (3)

## Numbers of pay discrimination settlements out of OFCCP discrimination cases by Fiscal Year

- 8 of 33 in FY 2024
- 9 of 56 in FY 2023
- 8 of 34 in FY 2022



# OFCCP 2024 Activity: Current and Future Audits

## OFCCP issued multiple Corporate Scheduling Announcement Lists (CSAL) of contractor establishments to be audited



### *Supply and Service contractors:*

- September 2023 CSAL had 1,000 entities (not quite finished with this list)
- June 2024 CSAL had 500 entities
  - 452 establishment reviews, 24 FAAPs, 24 Corporate Management (CMCE)
- November 2024 CSAL had 2,000 entities (over 2-3 years of audits!)
  - 1,880 establishment reviews, 48 FAAPs, 60 CMCE, 12 Universities

### *Construction contractors:*

- June 2023 CSAL issued for 250 construction contractors
- May 2024 designated additional 16 mega construction projects
  - Total designated is now 40
  - OFCCP working with construction contractors and later review

*OFCCP began using new construction contractor scheduling letter effective October 1, 2024 which is more extensive*

## OFCCP 2024 Activity: Observations on Compliance Reviews



- OFCCP continues with detailed in-depth reviews
- Revised Service and Supply scheduling letter taking much more time to respond to reviews (almost double!)
  - More requests upfront for data, documents and interviews
- As in the last several years, with current OFCCP staffing levels unchanged, there are limits as to how many reviews can be initiated and completed (less than 1,000 annually)

## Noteworthy Developments - 2024



- OFCCP updated Protected Veterans hiring benchmark to 5.2% eff. 3/31/2024
- EEOC and OFCCP continue to look at the use of Artificial Intelligence (AI)
  - OFCCP asking about AI in compliance review
  - EEOC continuing its efforts to examine more closely the use of AI and to provide guidance to employers
  - USDOL issued more AI guidance October 2024
- Supreme Court decision on UNC-Chapel Hill and Harvard admissions policy and impact on AAP compliance obligations and activity
- Qdoba Washington State pay transparency case
  - Employer failed to list wage ranges on job listing, etc.
  - Settlement negotiated with class \$3.8 million

# AAP Areas to Focus on in 2025

## Compensation

- Contractors need to undertake a review of their compensation “system”
- But sophisticated statistical analysis may not be always be necessary or appropriate
  - Consider review of compensation system (non-quantitative)
  - Cohort analysis or more limited calculations
- How will you respond to Item Listing 22 in the Scheduling Letter that contractor *“satisfied its obligation to evaluate its “compensation system(s) to determine whether there are gender-, race-, or ethnicity-based disparities,” as part of the contractor’s “in-depth analyses of its total employment process” required by 41 CFR 60-2.17(b)(3). Include documentation that demonstrates at least the following:*
  - a. When the compensation analysis was completed;
  - b. The number of employees the compensation analysis included and the number and categories of employees the compensation analysis excluded;
  - c. Which forms of compensation were analyzed and, where applicable, how the different forms of compensation were separated or combined for analysis (e.g., base pay alone, base pay combined with bonuses, etc.);
  - d. That compensation was analyzed by gender, race, and ethnicity; and
  - e. The method of analysis employed by the contractor (e.g., multiple regression analysis, decomposition regression analysis, meta-analytic tests of z-scores, compa-ratio regression analysis, rank-sums tests, career-stall analysis, average pay ratio, cohort analysis, etc.).



# AAP Areas to Focus on in 2025

## Outreach efforts

- Protected Veterans and Individuals with Disabilities
  - Review results of hiring benchmark goal for Protected Veterans
  - Evaluate utilization goal (static 7%) for Individuals with Disabilities
  - Engage with local outreach partners for veterans and disabled
    - Just posting jobs with outreach agencies is not sufficient under the regulations
  - Complete annual assessment of outreach efforts annually to evaluate effectiveness
- Women and Minorities
  - Annually determine progress towards goals for prior AAP year
    - If failed to meet goal(s), document good faith efforts undertaken in past AAP year
  - What are your anticipated good faith efforts for any goals established in current AAP year?
    - Be sure to document as you undertake these efforts



# What to Expect in 2025



## OFCCP's latest regulatory agenda included

- “*Modernizing Affirmative Action and Nondiscrimination Obligations for Federal Contractors and Subcontractors*“ which would propose changes to regulations  
Would potentially impact:
  - Executive Order 11246 (women/minorities)
  - VEVRAA (veterans) and Section 503 (disabled)
- “*Technical Amendments to OFCCP Regulations*” for minor rule changes
- Unlikely in 2025

## EEOC was considering possible return of EEO-1 Component 2 requirement for compensation

- Unlikely with change in administration

## OMB requiring modification of categories for race and ethnicity surveys

- New category for Middle Eastern and North African, separating from Whites
- One self-id question to cover both race and ethnicity (two were optional in past)

# What to Expect in 2025



## Low numbers of compliance reviews

- Still under 1,000 given OFCCP's similar headcount and spending longer on each review
- Increased focus by OFCCP on construction contractors

## If selected for a compliance review (audit)

- Contractors will spend a lot of time on the initial submission
- Longer reviews (since more data and documents provided upfront)
- Continued focus on compensation and hiring
- Less transparency in reviews and reluctance by OFCCP to share basis of findings

# What to Expect in 2025

## Possible AAP/AA areas impacted in 2025 under the incoming Trump administration

- AAP regulations and underlying laws/regulations
  - Executive Order 11246 - Women and Minorities AAP
  - Vietnam Era Veterans Act as Amended (VEVRAA) - Protected Veterans AAP
  - Section 503 of the Rehabilitation Act of 1973 - Individuals with Disabilities AAP
- OFCCP's continued role as the AAP regulatory agency in the USDOL
- EEO-1 Type 1 report (existing data collection)
- State EEO/AA regulatory efforts
- Federal Artificial Intelligence (AI) policies and guidance





# What to Expect in 2025



## AAP regulations and underlying laws/regulations

### *Executive Order 11246 - Women and Minorities AAP*

- President-elect Trump could rescind Executive Order 11246 on or after January 20, 2025, through an Executive Order
- Impact would be to remove regulations that require federal contractors to prepare an AAP for Women and Minorities

### *Vietnam Era Veterans Readjustment and Assistance Act as Amended (VEVRAA) - Protected Veterans AAP*

- President-elect Trump cannot remove this obligation through an Executive Order
- Since this is based on Congressional action to establish this Act, would require Congress to repeal this
- Note that there are still a number of data driven reports as part of the AAP

### *Section 503 of the Rehabilitation Act of 1973 - Individuals with Disabilities AAP*

- Similar three points as noted above for the VEVRAA regulations

# What to Expect in 2025

## OFCCP's continued role as the AAP regulatory agency in the U.S. Department of Labor



- If Executive Order 11246 is rescinded, a major part of the OFCCP's enforcement role would be reduced
- Options for enforcement role could be:
  - **Keep OFCCP** but at a reduced budget and headcount to enforce the Protected Veterans and Individuals with Disabilities AAP and related obligations
  - **Eliminate OFCCP** within the USDOL transfer oversight responsibility to another DOL agency (VETS?)
  - **Eliminate OFCCP** and move enforcement role to EEOC
    - Has been discussed a number of times during the last 20 years+ including during the first Trump administration
    - There are challenges with this possible action since Congress delegated the oversight authority to the USDOL in the Executive Branch. EEOC is an independent agency.

# What to Expect in 2025



## EEO-1 Component 1 report (existing data collection)

- Currently the EEO-1 reporting is administered by EEOC
- Some preliminary discussions about incoming administration eliminating the EEO-1 report
- In the past several years, there was discussion about adding back the Component 2 reporting which captured compensation data
- Probably hard for EEOC to add Component 2 during the Trump administration

# What to Expect in 2025

## State and local EEO/AA regulatory efforts

- A limited number of states have Affirmative Action requirements, such as Minnesota
  - These vary in scope and in their requirements
  - Some are basically EEO-1 type reporting and some other obligations
- Number of states enacting some type of pay transparency requirements continues to grow
- Some states such as California require employers to report compensation data for California-based or -residing workers. Others are considering or will be in the future.
- If Executive Order 11246 is rescinded, is it possible states will step up their efforts or introduce new AA requirements?



# What to Expect in 2025

## Federal Artificial Intelligence (AI) policies and guidance

- AI oversight and guidance driven primarily by recent Executive Order 14110
- Each Executive Branch department has been required to publish their own guidance regarding AI. USDOL, EEOC and OFCCP have done that to provide guidance but also to put employers on notice.
- If Executive Order 14110 is rescinded, federal agencies will no longer be required to provide guidance and oversight
- If the Executive Order is not rescinded, with the prospect of smaller Executive Branch Departments and agencies, where will the guidance and enforcement come from?





# Questions?



## PRESENTATION AVAILABLE FOR VIEWING

### Don't forget...

- Today's PowerPoint presentation and recording will be available next week on [www.smithlaw.com/newsroom/events](http://www.smithlaw.com/newsroom/events) and all past recorded webinars are available to view and download too.



*Thank you for attending  
today's webinar!*

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