

FY 2022

CONGRESSIONAL BUDGET JUSTIFICATION

**OFFICE OF FEDERAL CONTRACT COMPLIANCE
PROGRAMS**

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OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

TABLE OF CONTENTS

Appropriation Language	1
Amounts Available for Obligation.....	2
Summary of Changes	3
Summary of Budget Authority and FTE by Activity.....	5
Budget Authority by Object Class	6
Significant Items in Appropriations Committees' Reports	7
Authorizing Statutes.....	10
Appropriation History	11
Overview	12
Organization Chart.....	14
Budget Activities	15
Office of Federal Contract Compliance Programs.....	15

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OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

APPROPRIATION LANGUAGE

SALARIES AND EXPENSES

For necessary expenses for the Office of Federal Contract Compliance Programs,
[\$105,976,000]\$140,732,000.

(Department of Labor Appropriations Act, 2021.)

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

AMOUNTS AVAILABLE FOR OBLIGATION						
(Dollars in Thousands)						
	FY 2020 Revised Enacted		FY 2021 Enacted		FY 2022 Request	
	FTE	Amount	FTE	Amount	FTE	Amount
A. Appropriation	472	\$105,976	451	\$105,976	639	\$140,732
<i>Subtotal Appropriation</i>	<i>472</i>	<i>\$105,976</i>	<i>451</i>	<i>\$105,976</i>	<i>639</i>	<i>\$140,732</i>
B. Gross Budget Authority Before Committee	472	\$105,976	451	\$105,976	639	\$140,732
Shared Services Realignment	-4	\$0	0	\$0	0	\$0
C. Budget Authority Before Committee	468	\$105,976	451	\$105,976	639	\$140,732
D. Total Budgetary Resources	468	\$105,976	451	\$105,976	639	\$140,732
FTE and Unobligated Balance Expiring	-21	-\$31	0	\$0	0	\$0
Shared Services Realignment	4	\$0	0	\$0	0	\$0
E. Total, Estimated Obligations	451	\$105,945	451	\$105,976	639	\$140,732

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

SUMMARY OF CHANGES

(Dollars in Thousands)

	FY 2021 Enacted	FY 2022 Request	Net Change
Budget Authority			
General Funds	\$105,976	\$140,732	+\$34,756
Total	\$105,976	\$140,732	+\$34,756
Full Time Equivalents			
General Funds	451	639	188
Total	451	639	188

FY 2022 Change

Explanation of Change	FY 2021 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Increases:								
A. Built-Ins:								
To Provide For:								
Costs of pay adjustments	451	\$50,432	0	\$0	0	\$1,409	0	\$1,409
Personnel benefits	0	\$0	0	\$0	0	\$0	0	\$0
Employee health benefits	0	\$18,213	0	\$0	0	\$759	0	\$759
Moving allowance	0	\$0	0	\$0	0	\$0	0	\$0
Federal Employees' Compensation Act (FECA)	0	\$239	0	\$0	0	\$22	0	\$22
Benefits for former personnel	0	\$4	0	\$0	0	\$0	0	\$0
Travel and transportation of persons	0	\$286	0	\$0	0	\$0	0	\$0
Transportation of things	0	\$1	0	\$0	0	\$0	0	\$0
Rental payments to GSA	0	\$5,386	0	\$0	0	\$0	0	\$0
Rental payments to others	0	\$0	0	\$0	0	\$0	0	\$0
Communications, utilities, and miscellaneous charges	0	\$174	0	\$0	0	\$0	0	\$0
Printing and reproduction	0	\$21	0	\$0	0	\$0	0	\$0
Advisory and assistance services	0	\$29	0	\$0	0	\$0	0	\$0
Other services from non-Federal sources	0	\$5,475	0	\$0	0	\$0	0	\$0
Working Capital Fund	0	\$15,682	0	\$0	0	\$0	0	\$0
Other Federal sources (DHS Charges)	0	\$1,742	0	\$0	0	\$0	0	\$0
Other goods and services from Federal sources	0	\$0	0	\$0	0	\$0	0	\$0
Research & Development Contracts	0	\$0	0	\$0	0	\$0	0	\$0
Operation and maintenance of facilities	0	\$300	0	\$0	0	\$0	0	\$0

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

FY 2022 Change

Explanation of Change	FY 2021 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Operation and maintenance of equipment	0	\$6,634	0	\$0	0	\$0	0	\$0
Supplies and materials	0	\$485	0	\$0	0	\$0	0	\$0
Equipment	0	\$843	0	\$0	0	\$0	0	\$0
Grants, subsidies, and contributions	0	\$0	0	\$0	0	\$0	0	\$0
Insurance claims and indemnities	0	\$30	0	\$0	0	\$0	0	\$0
Built-Ins Subtotal	451	+\$105,976	0	\$0	0	+\$2,190	0	+\$2,190
B. Programs:								
Rebuilding OFCCP's Workforce	0	\$0	0	\$0	188	\$32,566	188	\$32,566
Programs Subtotal			0	\$0	188	+\$32,566	188	+\$32,566
Total Increase	451	+\$105,976	0	\$0	188	+\$34,756	188	+\$34,756
Decreases:								
A. Built-Ins:								
To Provide For:								
Built-Ins Subtotal	0	\$0	0	\$0	0	\$0	0	\$0
B. Programs:								
Total Decrease	0	\$0	0	\$0	0	\$0	0	\$0
Total Change	451	+\$105,976	0	\$0	188	+\$34,756	188	+\$34,756

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

SUMMARY BUDGET AUTHORITY AND FTE BY ACTIVITY								
(Dollars in Thousands)								
	FY 2020 Revised Enacted		FY 2021 Enacted		FY 2022 Request		Diff. FY22 Request / FY21 Enacted	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Office of Federal Contract Compliance Programs	451	105,976	451	105,976	639	140,732	188	34,756
General Funds	451	105,976	451	105,976	639	140,732	188	34,756
Total	451	105,976	451	105,976	639	140,732	188	34,756
General Funds	451	105,976	451	105,976	639	140,732	188	34,756

NOTE: 2020 reflects actual FTE.

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

BUDGET AUTHORITY BY OBJECT CLASS					
(Dollars in Thousands)					
		FY 2020 Revised Enacted	FY 2021 Enacted	FY 2022 Request	Diff. FY22 Request / FY21 Enacted
	Full-Time Equivalent				
	Full-time Permanent	472	451	639	188
	Total	472	451	639	188
	Average ES Salary	\$190,527	\$186,767	\$188,438	\$1,671
	Average GM/GS Grade	12	12	12	0
	Average GM/GS Salary	\$101,362	\$114,763	\$115,787	\$1,024
11.1	Full-time permanent	50,462	49,108	72,758	23,650
11.3	Other than full-time permanent	0	0	0	0
11.5	Other personnel compensation	1,260	1,324	1,630	306
11.8	Special personal services payments	0	0	0	0
11.9	Total personnel compensation	51,722	50,432	74,388	23,956
12.1	Civilian personnel benefits	17,020	18,452	26,297	7,845
13.0	Benefits for former personnel	1	4	31	27
21.0	Travel and transportation of persons	1,500	286	1,014	728
22.0	Transportation of things	1	1	1	0
23.1	Rental payments to GSA	6,235	5,386	5,374	-12
23.2	Rental payments to others	0	0	0	0
23.3	Communications, utilities, and miscellaneous charges	241	174	420	246
24.0	Printing and reproduction	35	21	20	-1
25.1	Advisory and assistance services	200	29	0	-29
25.2	Other services from non-Federal sources	4,938	5,475	1,818	-3,657
25.3	Other goods and services from Federal sources 1/	16,738	17,424	29,839	12,415
25.4	Operation and maintenance of facilities	300	300	500	200
25.5	Research and development contracts	0	0	0	0
25.7	Operation and maintenance of equipment	5,637	6,634	188	-6,446
26.0	Supplies and materials	643	485	377	-108
31.0	Equipment	735	843	405	-438
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	30	30	60	30
	Total	105,976	105,976	140,732	34,756
	1/Other goods and services from Federal sources				
	Working Capital Fund	15,900	15,682	15,682	0
	DHS Services	626	1,742	1,048	-694
	Services by DOL Agencies	0	0	13,109	13,109
	Services by Other Government Departments	212	0	0	0

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

SIGNIFICANT ITEMS IN FY 2016 APPROPRIATIONS' REPORTS

S. Report 114-74 page 29:

The Committee is concerned that OFCCP [Office of Federal Contract Compliance Programs] has lost its focus on identifying and addressing real employment discrimination and is imposing excessive compliance burdens on contractors. More specifically, OFCCP appears to prioritize specific quota results rather than equal consideration and opportunity because of its reliance on statistical analysis in evaluating contractor hiring practices. OFCCP should focus on actual discriminatory treatment instead of presumed discrimination based solely on benchmarks that may not be uniformly applicable. Strict and exclusive use of statistical significance tests effectively requires contractors to use a quota hiring system in violation of the Civil Rights Act to avoid adverse impact claims by OFCCP. The Committee is also concerned about reports that OFCCP is increasingly subjecting contractors to overly broad and unnecessary document and data requests as well as unreasonably numerous and lengthy compliance reviews. The OFCCP is directed to cease utilization of this de facto quota system for evaluating hiring practices and to report within 120 days of enactment to the Committees on Appropriations of the House of Representatives and Senate on steps it is taking to enforce non-discrimination standards on a more fair, case-by-case basis focused on evidence of actual discrimination rather than on statistical generalizations and quota benchmarks.

H. Report 114-195: Quotas

The Committee is concerned that OFCCP has lost its focus on identifying and addressing real discrimination in employment and has become hyper-focused on fulfilling quotas instead of equal opportunity by relying on statistics alone in evaluating contractors. The Committee believes OFCCP should take steps to use common sense in the use of government resources to focus on finding actual discriminatory treatment instead of presumed discrimination based solely on what OFCCP assumes through statistics. Further, the Committee believes that OFCCP should end its reliance on threatening sanctions, including debarment and the costs associated with an extremely drawn-out administrative litigation process, to induce contractors to waive their legal rights and to enter into conciliation agreements that are not justified by the evidence.

OFCCP Response:

OFCCP regulations and enforcement procedures neither create nor enforce quotas. To assess compliance with Executive Order 11246 and its nondiscrimination and affirmative action requirements, OFCCP reviews a subset of federal contractors each year, selected through a neutral process, to assess their hiring, promotion, compensation, termination, and other employment practices. As part of those reviews, OFCCP not only performs quantitative analyses

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

but also assesses a variety of other evidence. Following Supreme Court precedents, OFCCP considers statistical evidence to determine whether there are statistically significant disparities based on race, sex, or national origin among individuals who are qualified and available for the positions under review. Nearly 40 years ago, the United States Supreme Court held that statistical disparities establish a prima facie case of disparate treatment when they are “statistically significant” – i.e., at least two standard deviations from the results that would have been expected in the absence of discrimination. *Hazelwood School District v. United States*, 433 U.S. 299, 309 (1977); *Castaneda v. Partida*, 430 U.S. 482, 496 n.17 (1977). A disparity of this magnitude “is generally highly probative of discriminatory treatment.” *Waisome v. Port Authority*, 948 F.2d 1370, 1376 (2d Cir. 1991) (“Social scientists consider a finding of two standard deviations significant, meaning there is about one chance in 20 that the explanation for a deviation could be random and the deviation must be accounted for by some factor other than chance.”). Indeed, “the lower courts have routinely accepted two standard deviations – which corresponds roughly to a two-tailed probability level of .05 -- as sufficient.” Lindemann, Grossman & Weirich, *Employment Discrimination Law*, at 3-20 (5th ed. 2012) (footnotes omitted).

In cases with potentially significant statistical disparities, OFCCP compliance officers will review documents and interview managers and workers. OFCCP would not pursue a matter solely on the basis of a statistical disparity where a contractor establishes a legitimate and valid explanation for that difference or where the contractor has established that the statistical disparity does not exist. OFCCP will issue a notice of violation only where there is an ample evidentiary record supporting the findings of discrimination. If OFCCP issues a notice of violation, it will negotiate conciliation agreements with contractors that wish to correct violations voluntarily.

OFCCP does not promote quotas in entry-level hiring or any other cases. The agency requests and considers any information that contractors provide to explain a disparity in hiring rates or any other employment practice. OFCCP investigators will review documents and data, and also interview employees and company officials regarding these decisions. When contractors provide credible, legitimate, nondiscriminatory, and legally sufficient explanations for potential violations that OFCCP has identified, the agency will adjust its findings accordingly. This includes explanations that address portions of the violation or information that would properly mitigate some portion of the back pay owed to affected workers.

OFCCP does not subject contractors to unreasonable or unnecessary compliance reviews or document or data requests. Contractor establishments are selected for compliance evaluations based on a neutral selection process that uses multiple information sources and factors to develop a scheduling list. See <http://www.dol.gov/ofccp/regs/compliance/faqs/fcssfaqs.htm>. Contractors selected for review receive a scheduling letter and an itemized listing of documents and data to provide to OFCCP. Both the scheduling letter and the itemized listing have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act. During the course of an evaluation, contractors may be asked to provide additional information

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

as needed. Courts and administrative law judges have repeatedly upheld the validity and constitutionality of this process and OFCCP's authority to obtain the information requested in compliance evaluations. As the United States District Court for the District of Columbia held in *United Space Alliance v. Solis*, “[s]ubmission to such lawful investigations [conducted by OFCCP] is the price of working as a federal contractor.” 824 F. Supp. 2d 68, 99 (D.D.C. 2011).

OFCCP does not threaten contractors with debarment or other sanctions to induce them to enter into unjustified conciliation agreements. When OFCCP makes a finding of discrimination in employment practices by a contractor, it identifies appropriate types of relief for recovery based on the nature of the violation(s), including monetary remedies, jobs, injunctive relief, and, in extreme cases, debarment. As noted above, OFCCP issues notices of discrimination violations only where there is an ample evidentiary record supporting findings of discrimination. When OFCCP does issue a notice of violation, it attempts to negotiate a conciliation agreement and, as part of that negotiation, requests and considers any information that contractors provide.

OFCCP consistently seeks to resolve cases without litigation, a goal supported by the record. In FY 2020, OFCCP obtained \$35.6 million in monetary settlements for more than 68,000 affected class members.

This information will be provided to the Committees on Appropriations of the House of Representatives and Senate in report format as directed in S. Report 114-74.

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

AUTHORIZING STATUTES

Public Law / Act	Legislation	Statute No. / US Code	Volume No.	Page No.	Expiration Date
PUB. L. 93-112	Rehabilitation Act of 1973, as amended.	29 U.S.C. 793			N/A
PUB. L. 93-508	Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended.	38 U.S.C. 4212			N/A
PUB. L. 101-336	Americans with Disabilities Act, as amended.	42 U.S.C. 12101 et seq.			N/A

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

APPROPRIATION HISTORY					
(Dollars in Thousands)					
	Budget Estimates to Congress	House Allowance	Senate Allowance	Appropriations	FTE
2012					
Base Appropriation	\$109,010			\$105,187	755
2013					
Base Appropriation...1/	\$106,415			\$99,685	729
2014					
Base Appropriation	\$108,467			\$104,976	683
2015					
Base Appropriation	\$107,903			\$106,476	621
2016					
Base Appropriation	\$113,687	\$100,500	\$96,000	\$105,476	615
2017					
Base Appropriation	\$114,169			\$104,476	556
2018					
Base Appropriation	\$88,000	\$94,500		\$103,476	514
2019					
Base Appropriation...2/	\$91,100		\$103,476	\$103,476	500
2020					
Base Appropriation...3/ 4/	\$103,576	\$120,000		\$105,976	472
2021					
Base Appropriation...4/	\$106,412			\$105,976	451
2022					
Base Appropriation	\$140,732				639

1/ Reflects a 0.2 percent across the board rescission pursuant to P.L. 113-6 and the sequestration reduction pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985.

2/ This bill was passed by the Senate. It was passed out of the House Subcommittee but was not reported out of the House Committee or by the full House.

3/ This bill was passed by the House. It was not taken up by the Senate Appropriations Subcommittee or full Appropriations Committee.

4/ FTE for FY 2020 and FY 2021 reflect the Shared Services Realignment.

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

OVERVIEW

The Department of Labor’s (DOL) Office of Federal Contract Compliance Programs (OFCCP) protects workers, promotes diversity and enforces the law. OFCCP enforces the affirmative action and equal employment opportunity obligations required of employers who do business with the federal government. OFCCP works to promote greater equity and ensure non-discrimination on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin, disability, or status as a protected veteran. OFCCP’s mission aligns with DOL’s Strategic Goal 2 to “Promote Safe Jobs and Fair Workplaces for All Americans.” More specifically, OFCCP’s work in FY 2021 contributes to Strategic Objective 2.5 to “Promote fair and diverse workplaces for America’s federal contractor employees.”

OFCCP administers and enforces three equal employment opportunity laws: Executive Order 11246, as amended (Executive Order); Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503); and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA).¹ Collectively, these laws, as amended, make it unlawful for contractors and subcontractors doing business with the federal government to discriminate in employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. In addition, contractors and subcontractors are prohibited from discriminating against applicants or employees because they inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations, and may not retaliate against applicants or employees for engaging in protected activities. These laws also require that federal contractors provide equal employment opportunity through affirmative action.

OFCCP’s work is more important than ever given our current economic situation. More than a year into the pandemic, millions of workers are still struggling.

OFCCP plays a powerful role in advancing President Biden’s commitment to racial equity by rooting out systemic employment inequities that have denied opportunities to vulnerable workers. Currently, approximately 25,000 covered federal contractors with 120,000 establishments employ approximately 20% of the American workforce.

OFCCP’s work is focused on identifying patterns of systemic discrimination when it conducts compliance evaluations of contractors’ affirmative action programs. These evaluations focus on potential barriers in employer personnel practices, including hiring, promotion and compensation.

- Through its compliance evaluations, OFCCP promotes fair and diverse workplaces for America’s workers by identifying and remedying violations of the laws it enforces.

¹ Executive Order 11246, Sept. 24, 1965, 30 FR 12319, 12935, 3 CFR, 1964-1965, Comp., p. 339, as amended; Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793, (Section 503); and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212.

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

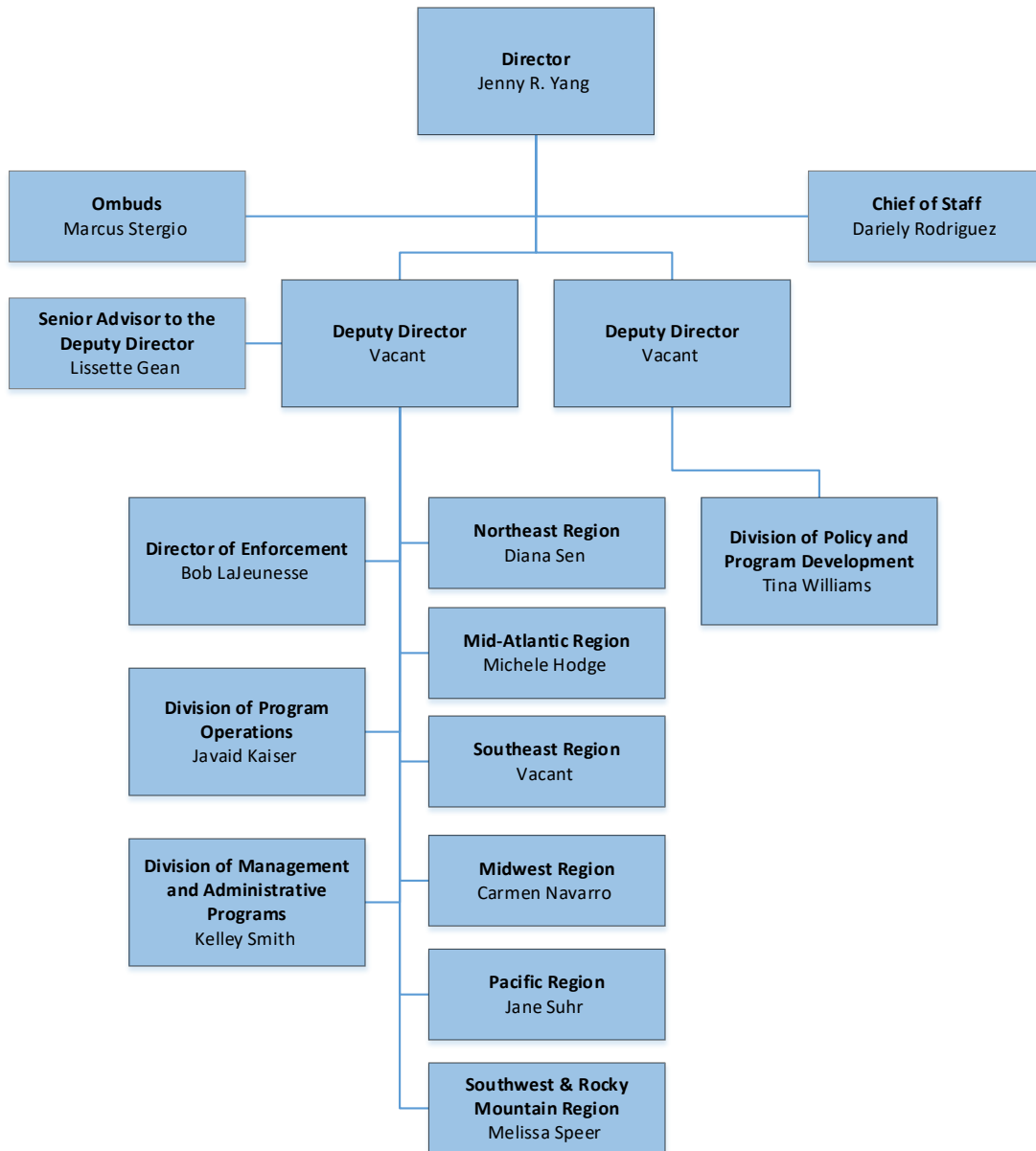
- Through compliance assistance and outreach, OFCCP helps to ensure that federal contractors have the information and the tools they need to comply with the law.
- Through fair enforcement of the law, OFCCP helps to ensure that employers are held accountable for violations of their nondiscrimination and affirmative action obligations.

In recent years, OFCCP's staffing levels have dropped significantly. In FY 2020, OFCCP operated with a staffing level of 452 employees compared to 755 in FY 2011. In order for OFCCP to fully enforce civil rights protections on behalf of American workers, the agency needs significant investments to support increases in staffing, modernization of its technology to maximize the efficiency of agency staff, and revitalization of its compliance, enforcement and outreach programs. Increased funding will support OFCCP's critical contractor compliance assistance and enforcement work to ensure federal contractor workplaces promote equal opportunity and are free from discrimination and harassment. It will also allow the agency to conduct a larger number of pre-award and compliance evaluations, and pursue more enforcement actions. Strategic investments during this pivotal time will enable the agency to create new norms of practice in the contractor community that will lead to more just workplaces and good jobs to workers from communities that have long been excluded.

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

ORGANIZATION CHART

The OFCCP is comprised of a national office headquartered in Washington, D.C. with three divisions, one office, and six regional offices with district and area offices distributed 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).



OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

BUDGET AUTHORITY BEFORE THE COMMITTEE				
(Dollars in Thousands)				
	FY 2020 Revised Enacted	FY 2021 Enacted	FY 2022 Request	Diff. FY22 Request / FY21 Enacted
Activity Appropriation	105,976	105,976	140,732	34,756
FTE	451	451	639	188

NOTE: FY 2020 reflects actual FTE. Authorized FTE for FY 2020 was 472.

Introduction

Historically, OFCCP has prioritized tackling systemic discrimination particularly in hiring and compensation. Through its compliance evaluations and enforcement actions, OFCCP has obtained significant relief for victims of discrimination, including back pay and job offers in addition to changes to employment practices to advance equal opportunity and eradicate systemic discrimination. In FY 2020, OFCCP experienced performance improvements, such as completing desk audits in 40 days, reducing the aged case rate to 7.8 percent, timely completing complaint investigations at the rate of 86 percent, identifying discrimination at the rate of 5 percent, and collecting significant financial remedies for affected workers. OFCCP obtained \$40.6 million in monetary settlements for affected class members during FY 2019. OFCCP continued this activity in FY 2020 during the pandemic, with recoveries of \$35.6 million. At the same time, the agency completed 683 technical assistance events. In addition, OFCCP produced a neutral and centralized scheduling list of construction contractors and included contractor establishments at a higher risk of noncompliance in the Supply and Service scheduling list and Construction scheduling list.

In FY 2022, OFCCP will advance President Biden’s commitment to racial and economic equity by fully enforcing our civil rights laws to uproot employment practices that perpetuate discrimination. Specifically, the agency will focus on rebuilding its workforce; investing in its technological infrastructure; reinvigorating our construction industry enforcement activities; increasing contractor accountability by collecting compliance certifications from federal contractors; and launching a comprehensive racial equity initiative.

Five-Year Budget Activity History

<u>Fiscal Year</u>	<u>Funding</u> (Dollars in Thousands)	<u>FTE</u>
2017	\$104,476	556
2018	\$103,476	514
2019	\$103,476	500
2020	\$105,976	472
2021	\$105,976	451

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

FY 2022

The FY 2022 OFCCP funding request is \$140,732,000 and 639 FTE. This includes a program increase in the amount of \$34,756,000 and 188 FTE to rebuild OFCCP's workforce and to prevent personnel compensation erosion from pay raises and increased benefit costs.

Rebuilding Workforce

This funding request specifically supports the hiring, retention, and training of a highly qualified and diverse workforce to support OFCCP in advancing its mission through enforcement, outreach and education, stakeholder engagement, and compliance assistance while emphasizing efficiency, productivity, and accountability throughout the organization. As the Agency rebuilds, OFCCP will continue robust engagement with a broad coalition of stakeholders, including contractors. The Agency will develop resources to highlight evidence-based research and promising practices to inform employers when developing actionable strategies to build inclusive workplace cultures and advance equity. It would also support the resources necessary to onboard new hires, develop and deliver in-depth employee training programs, and invest in the requisite workforce technological equipment and solutions. Investing in training and technology support along with hiring will help ensure long-lasting operational success and prevent attrition.

Technology Modernization

In FY 2022, OFCCP will continue to prioritize expediting the modernization of its technology to promote greater employer compliance while maximizing the efficiency of agency staff. This includes completing OFCCP's Compliance Management System (CMS) development, which enables field staff to collaborate across the country, facilitates remote supervision, and permits the agency to more strategically deploy resources by tracking data and identifying patterns at a national level. In FY 2022, OFCCP also plans to deploy the Notification Construction Award Portal (NCAP), allowing federal procurement officers, States, and construction contractors and subcontractors to electronically notify OFCCP of construction awards valued at \$10,000 or more. This IT modernization effort centralizes the notification process in the national office, increasing field efficiencies by relieving staff from having to manage contract award notifications.

Reinvigorating Construction Enforcement

With increased funding in FY 2022, OFCCP would reinvigorate its compliance program for federal construction contractors and subcontractors and federally assisted construction contractors and subcontractors. This effort would be instrumental for the Department to ensure equal employment opportunities and pay equity for good jobs in the construction industry. OFCCP also plans to launch an outreach and education campaign to advance equity in construction contractor workplaces and to educate workers of their rights under the mandates enforced by OFCCP.

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

Increasing Contractor Accountability

In addition, the funding request would support the maintenance of the Affirmative Action Program Verification Interface (AAP-VI), a multi-million dollar effort launched by the prior administration to create a portal for contractors to self-certify that they have completed their Affirmative Action Programs (AAP). GAO audits in 2019 and 2016 concluded that reliance on voluntary compliance undermined the agency's effectiveness, finding in 2016 that close to 85 percent of evaluated contractor establishments did not submit their AAPs within 30 days of OFCCP's request during compliance evaluations. The AAP provides the foundation for an analysis of the composition of the workforce and plans for addressing hiring, compensation, benefits, promotion and other job related disparities. The failure of contractors to provide a timely AAP during compliance reviews is one of the central obstacles to OFCCP's efficient and timely enforcement. If approved by OMB, OFCCP plans to utilize the certification data to more effectively build a neutral scheduling process that will enable the agency to focus its limited resources on compliance evaluations of contractors where there are more likely to be indicators of systemic discrimination.

Racial Equity Initiative

The funding request would support OFCCP developing a comprehensive initiative to advance racial equity at work. President Biden has made a historic commitment to advancing racial equity, prioritizing it as a key pillar of his Administration. The OFCCP has a critical opportunity to work with a broad coalition of stakeholders in the pursuit of a common goal – to eliminate systemic discrimination in the workplace and proactively advance equality of opportunity. The purpose of this initiative is to identify promising practices, evidenced-based research, and innovative initiatives that can lead to more diverse, equitable, and inclusive workplaces that increase racial equity in employment opportunities. In particular, the initiative will focus on examining employment practices that have been effective in closing racial pay gaps; increasing the recruitment and hiring of workers of color, particularly in fields where there has long been underrepresentation; and facilitating the promotion of workers of color into senior-level and executive positions.

FY 2021

OFCCP's FY 2021 Enacted funding level is \$105,976,000 and 451 FTE.

Revocation of Executive Order 13950 and Implementation of Executive Order 13985

In FY 2021, OFCCP took immediate action to implement President Biden's revocation of Executive Order 13950 and posted a notice on DOL's website detailing OFCCP's actions, including ending the collection and investigation of any complaints received related to diversity training programs. As part of its efforts to reverse the impact of the prior administration's Executive Order 13950 on "divisive" diversity training, on March 18, 2021, OFCCP convened researchers who have been studying diversity training to understand opportunities to utilize diversity training as one component of broader organizational efforts to eliminate bias from employment practices and promote behavioral and cultural change. OFCCP held additional

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

stakeholder meetings to inform agency resources on diversity training promising practices for the employer community and worker advocates. All of these efforts are part of OFCCP's implementation of Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government."

Supply and Service Scheduling List

In FY 2021, OFCCP amended its FY 2020 Supply and Service Scheduling List by removing all Supply and Service establishments previously selected to receive focused reviews and compliance checks. OFCCP retained only full compliance reviews. This change allowed OFCCP to strategically allocate its limited resources on comprehensive compliance evaluations and identifying and remedying systemic discrimination. In taking this approach, OFCCP built on the successes and lessons learned from the Section 503 and VEVRAA Focused Review program, to strengthen the enforcement of its laws protecting people with disabilities and veterans during comprehensive compliance evaluations.

Expanding Stakeholder Outreach

OFCCP prioritized broader stakeholder engagement in FY 2021 to ensure that the agency provides useful, effective and consistent compliance assistance to *all* of its stakeholders, including workers, advocates and the contractor community. Throughout the fiscal year, OFCCP engaged numerous stakeholders including, civil rights groups, organizations that advocate for individuals with disability, diversity training practitioners, employer organizations, and tradeswomen organizations. OFCCP also actively engaged with the White House, Department of Justice, the Equal Employment Opportunity Commission (EEOC), Office of Personnel Management, Department of Health and Human Services, and collaborated outreach with the Office of Disability Employment Policy, the Women's Bureau, and the Veterans' Employment and Training Service. In addition, OFCCP hosted multiple meet and greet sessions with advocacy and worker rights groups to broaden its stakeholder engagement and educate workers about their employment rights and OFCCP's laws and services.

Construction Program Revitalization

As part of a comprehensive effort to reinvigorate OFCCP's Construction Program, OFCCP developed a letter to be used for scheduling construction compliance reviews for authorization by the Office of Management and Budget. The authorization enables OFCCP to collect payroll data and other records for review prior to an onsite evaluation to determine whether there are potential indicators of discrimination or other violations of OFCCP's laws. Having this information to conduct a desk audit prior to the on-site phase of a construction review will make OFCCP's construction reviews more efficient when they begin in FY 2021. OFCCP is beginning to reengage the construction contractor community by conducting several hundred construction compliance checks. The compliance checks ensure construction contractors maintain essential records, without conducting in-depth analysis of payroll or other employment records.

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

Authorization of Contractor AAP Certification and Submission Portal

In part to implement a GAO recommendation, OFCCP received authorization from the Office of Management and Budget to implement a verification process to ensure that 100% of federal contractors known to OFCCP develop and maintain Affirmative Action Programs (AAPs). Under the authorization, contractors will annually certify that they maintain they have a current AAP and, if scheduled for a compliance evaluation, will submit their AAP using an online portal. This information collection enabled the agency to launch the implementation of AAP-VI.

OFCCP Employee Learning Portal

In FY 2021, OFCCP launched an online learning management system for agency employees. The OFCCP Learning Portal is a way for the agency to train its employees in a blended learning environment with live sessions and self-paced online educational opportunities to receive continuing education units. The training portal strengthens the agency's enforcement program and helps bring consistency to the implementation of OFCCP policies and programs.

FY 2020

The FY 2020 Enacted funding level was \$105,976,000 with 472 FTE. OFCCP built upon work initiated in FY 2018 and FY 2019 to ensure contractor compliance with OFCCP requirements; provide innovative compliance assistance to contractors; invest in staff development and performance accountability; and improve agency data quality, efficiency and effectiveness through the deployment of various information technology modernization initiatives.

In FY 2020, OFCCP fully implemented its Ombuds Service by publishing a protocol outlining the ombuds procedures. The Ombuds Service brings an impartial and independent perspective to facilitate communication with external stakeholders on OFCCP matters, in collaboration with OFCCP regional and district offices, and ultimately improves the efficiency and effectiveness of internal OFCCP operations. The ombuds worked with the Office of Enforcement to further develop the Agency's nascent pre-referral mediation program.

Focused Reviews

In FY 2020, OFCCP continued to prioritize focused reviews. In FY 2018, the agency issued Directive 2018-04², directing a portion of the future scheduling lists to include focused reviews as to each of the three authorities that the OFCCP enforces – Executive Order 11246, Section 503, and VEVRAA. The agency began this initiative in FY 2019, by scheduling 500 Section 503 focused reviews at federal contractor corporate headquarters. In FY 2020, OFCCP issued its first VEVRAA Focused Review supplemental scheduling list, in honor of Veterans' Day, and held a series of VEVRAA related events. OFCCP VEVRAA focused reviews review contractors' compliance with OFCCP regulations that cover protected veterans, spouses of protected veterans, and protected veterans with disabilities. OFCCP created a Focused Review

² [Directive 2018-04, Focused Reviews of Contractor Compliance with Executive Order 11246 \(E.O.\) as amended; Section 503 of the Rehabilitation Act of 1973 \(Section 503\), as amended; and Vietnam Era Veterans' Readjustment Assistance Act of 1974 \(VEVRAA\), as amended, August 10, 2018.](#)

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

landing page, which highlights best practices, stakeholder resources, FAQs, and other guidance to assist federal contractors with meeting their EEO obligations.

Quality Contractor Compliance Assistance and Stakeholder Engagement

Using existing Memoranda of Understanding and obtaining feedback through various stakeholder meetings, OFCCP refined its existing compliance assistance materials in FY 2020. The refinements included updating content, as well as identifying and developing new aids to deliver practical and useful information to support contractors and workers understanding their responsibilities and rights. In FY 2020, OFCCP published its Educational Institutions Technical Assistance Guide, Construction Technical Assistance Guide, Supply and Service Technical Assistance Guide, and the Federal Contract Compliance Manual (FCCM).

Contractor Online Training Program

In addition, OFCCP launched the electronic Learning Management System (eLMS) for federal contractors. With this system, contractors can take virtual courses to learn about their federal contracting obligations. The courses are free to the public. In FY 2020, through its eLMS, OFCCP offered rigorous training and education to contractors. The training topics included: developing affirmative action programs, effectively implementing outreach and recruitment activities, and conducting self-audits. OFCCP offered a temporary exemption from scheduling³ for contractors that successfully completed the training and passed the final assessment. This training program incentivizes contractor learning and supports proactive contractor compliance with their OFCCP requirements. Based on existing agency resources, this program could benefit between 1,500 to 3,000 contractors annually.

Expanded Stakeholder Engagement

In FY 2020, in support of a White House initiative, OFCCP conducted significant outreach to Historically Black Colleges and Universities (HBCUs) and Hispanic Association of Colleges and Universities (HACUs). The 107 HBCUs and 304 HACUs throughout the United States are tremendous sources of potential job applicants for federal contractors and it is important that federal contractors are fully engaging with minority serving education institutions. Specifically, in FY 2020, OFCCP's efforts included: (i) creating a regional plan of action; (ii) setting time frames to reach out to all HBCUs and HACUs in the regions; (iii) coordinating with other federal agencies to participate in these efforts, and (iv) creating and holding webinars for the regions and other agencies regarding the HBCU/HACU initiative.

In FY 2020, OFCCP strengthened its Indian and Native American Employment Rights Program (INAERP), which is committed to fostering opportunities for employment with federal contractors and subcontractors and enforcing the worker protection rights of Indian and Native American job seekers and wage earners. Building off OFCCP's FY 2019 Native American Town Hall event, OFCCP participated in several events focusing on enhancing INAERP and educating contractors' on their ability to extend a hiring preference to Indians on or near Indian reservations for work at those locations. In addition, OFCCP expanded relationships with the

³ Exemption was limited to a specific establishment.

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

Equal Employment Opportunity Commission (EEOC), Small Business Administration, Department of Justice, Bureau of Indian Affairs, and the Federal Highway Administration, and developed partnerships among community-based organizations, tribal communities, and contractors.

Contractor Recognition Programs

In FY 2020, OFCCP awarded the first recipients of the Excellence in Disability Inclusion (EDI) Award. This award, created in conjunction with DOL's Office of Disability Employment Policy (ODEP), recognizes exemplary federal contractor establishments for their commitment to disability inclusion.

Regulatory Action

In FY 2020, OFCCP published one final rule, titled "Affirmative Action and Nondiscrimination Obligations of Federal Contractors and Subcontractors: TRICARE and Certain Other Health Care Providers," which amended regulations pertaining to OFCCP's authority over TRICARE health care providers. The rule increased access to care for uniformed service members and veterans and to provide certainty for health care providers who serve as beneficiaries of TRICARE and potentially result in cost savings to the health care system. In a reconsideration of OFCCP's previous legal position, the rule provided that the agency lacks authority over Federal health care providers who participate in TRICARE. The rule, as an alternative, established a national interest exemption from the laws enforced by OFCCP for health care providers with agreements to furnish medical services and supplies to individuals participating in TRICARE. OFCCP retained authority over health care providers participating in TRICARE if they hold a separate covered Federal contract or subcontract, and health care providers remain subject to all other Federal, state, and local laws prohibiting discrimination and providing for equal employment opportunity.

In FY 2020, OFCCP also began rulemaking on codifying its resolution procedures in a proposed rule titled "Nondiscrimination Obligations of Federal Contractors and Subcontractors: Procedures to Resolve Potential Employment Discrimination." That rule was finalized in FY 2021, and the agency is considering further modifications of it in FY 2021 as described above.

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

WORKLOAD AND PERFORMANCE SUMMARY					
		FY 2020 Revised Enacted		FY 2021 Enacted	FY 2022 Request
		Target	Result	Target	Target
Office of Federal Contract Compliance Programs					
Strategic Goal 2 - Promote Safe Jobs and Fair Workplaces for All Americans					
Strategic Objective OFCCP 2.5 - Promote fair and diverse workplaces for America's federal contractor employees.					
OFCCP-02	Number of Construction Evaluations Completed	300	2	300	300
OFCCP-03	Number of S&S Cases Opened	--	--	1,800	1,800
OFCCP-06	Percent of Aged Cases Open	15.0%	8.0%	15.0%	15.0%
OFCCP-08b	Percent of Compliance Evaluations Closed with Discrimination Findings	3.0%	5.0%	3.0%	3.0%
OFCCP-11	Percent of Cases Without Major Deficiencies	95%	--	95%	95%
OFCCP-12	Percent of Cases Without Technical Deficiencies	90%	--	90%	90%
OFCCP-15	Percent of Complaints Processed Within Standard Timeframe	90%	86%	90%	90%
OFCCP-16	Number of Contractor Compliance Assistance Events, Agency Wide	480	683	480	480
OFCCP-17a	Median Days to Process Desk Audits	45	43	40	40

Legend: (r) Revised (e) Estimate (base) Baseline -- Not Applicable TBD - To Be Determined [p] - Projection

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

Workload Summary

In FY 2020, OFCCP responded effectively to the operational challenges of working remotely. In FY 2020, OFCCP experienced performance improvements, such as completing desk audits in 40 days, reducing the aged case rate to 7.8 percent, timely completing complaint investigations at the rate of 86 percent, identifying discrimination at the rate of 5 percent, and collecting \$35.6 million for affected workers. The agency also completed 683 compliance assistance events. In addition, OFCCP produced a neutral and centralized scheduling list of construction contractors, and included contractor establishments at a higher risk of noncompliance in the Supply & Service and Construction scheduling lists.

Finally, in FY 2020, OFCCP responded to 4,765 total inquiries, comprised of 3,477 calls and 1,288 written questions. OFCCP published on its website answers to frequently asked questions and launched landing webpages dedicated to specific issues, such as the employment of Native and Indian American workers.

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

BUDGET ACTIVITY BY OBJECT CLASS					
(Dollars in Thousands)					
		FY 2020 Revised Enacted	FY 2021 Enacted	FY 2022 Request	Diff. FY22 Request / FY21 Enacted
11.1	Full-time permanent	50,462	49,108	72,758	23,650
11.3	Other than full-time permanent	0	0	0	0
11.5	Other personnel compensation	1,260	1,324	1,630	306
11.8	Special personal services payments	0	0	0	0
11.9	Total personnel compensation	51,722	50,432	74,388	23,956
12.1	Civilian personnel benefits	17,020	18,452	26,297	7,845
13.0	Benefits for former personnel	1	4	31	27
21.0	Travel and transportation of persons	1,500	286	1,014	728
22.0	Transportation of things	1	1	1	0
23.1	Rental payments to GSA	6,235	5,386	5,374	-12
23.2	Rental payments to others	0	0	0	0
23.3	Communications, utilities, and miscellaneous charges	241	174	420	246
24.0	Printing and reproduction	35	21	20	-1
25.1	Advisory and assistance services	200	29	0	-29
25.2	Other services from non-Federal sources	4,938	5,475	1,818	-3,657
25.3	Other goods and services from Federal sources 1/	16,738	17,424	29,839	12,415
25.4	Operation and maintenance of facilities	300	300	500	200
25.5	Research and development contracts	0	0	0	0
25.7	Operation and maintenance of equipment	5,637	6,634	188	-6,446
26.0	Supplies and materials	643	485	377	-108
31.0	Equipment	735	843	405	-438
41.0	Grants, subsidies, and contributions	0	0	0	0
42.0	Insurance claims and indemnities	30	30	60	30
	Total	105,976	105,976	140,732	34,756
	1/Other goods and services from Federal sources				
	Working Capital Fund	15,900	15,682	15,682	0
	DHS Services	626	1,742	1,048	-694
	Services by DOL Agencies	0	0	13,109	13,109
	Services by Other Government Departments	212	0	0	0

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

CHANGES IN FY 2022

(Dollars in Thousands)

Activity Changes

Built-In

To Provide For:

Costs of pay adjustments	\$1,409
Personnel benefits	0
Employee health benefits	759
Moving allowance	0
Federal Employees' Compensation Act (FECA)	22
Benefits for former personnel	0
Travel and transportation of persons	0
Transportation of things	0
Rental payments to GSA	0
Rental payments to others	0
Communications, utilities, and miscellaneous charges	0
Printing and reproduction	0
Advisory and assistance services	0
Other services from non-Federal sources	0
Working Capital Fund	0
Other Federal sources (DHS Charges)	0
Other goods and services from Federal sources	0
Research & Development Contracts	0
Operation and maintenance of facilities	0
Operation and maintenance of equipment	0
Supplies and materials	0
Equipment	0
Grants, subsidies, and contributions	0
Insurance claims and indemnities	0

Built-Ins Subtotal **\$2,190**

Net Program **\$32,566**

Direct FTE **188**

	Estimate	FTE
Base	\$108,166	451
Program Increase	\$32,566	188
Program Decrease	\$0	0