

Insights, News & Events

OFCCP DIRECTOR SHIU OUTLINES OFFICE'S PLANS DURING LIVELY Q&A WITH FEDERAL CONTRACTORS DURING ANNUAL SWARM ILG CONFERENCE

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The Director of the Office of Federal Contract Compliance Programs (OFCCP) made it clear that the current White House backs her office's efforts to update laws impacting federal contractors. Patricia Shiu spoke to federal contractors on Wednesday, April 11, during the Southwest and Rocky Mountain ("SWARM") Industry Liaison Group ("ILG") Conference in San Antonio, Texas. She also held an *ad hoc* Question and Answer session with federal contractors attending the conference. During a meeting with representatives of state ILG chapters, Director Shiu made clear that the OFCCP wants to continue its longstanding partnership with the ILG groups across the country, which assist in educating federal contractors on compliance with affirmative action requirements. Below are a few of the highlights from Shiu's messages.

THE SPEECH

Director Shiu started her speech by referencing the "OFCCP and the Obama Administration," making it clear that the OFCCP has backing from the White House and is serious about updating the current laws surrounding affirmative action and federal contractors to ensure that there is accountability. She said her office is "standing on principle" and has the courage to make changes as an organization. Shiu wants to see more businesses hire disabled and veteran employees, and relayed that on her trip to Texas she has been meeting with community-based organizations, private companies, and others who are creating unique

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ways to assist disabled and veteran employees find jobs and receive the training they need.

Shiu also discussed the ILGs and stated these organizations, consisting of federal contractors and OFCCP staff, were “born for regular and effective communication” in close connection with each other in a non-adversarial setting. She discussed the longevity of such groups - they have survived for 30 years through various administrations and Congresses. Shiu stated that the OFCCP was “in it for the long haul” despite the ups and downs of the relationships between the contractors and the ILGs. She commented that the linchpin of the ILG relationship was civility and honesty and stated that she was irritated over articles “casting” and “divining” what she’s thinking or planning. Shiu told the group that she spends time “quelling rumors” and dispelling myths. Shiu made clear her belief that the various blogs and guesses on the OFCCP’s direction creates incorrect perceptions and speculation. She countered this by stating that part of the OFCCP’s budget was to assist contractors and offered to field questions from the audience in an attempt to show her seriousness about an open and honest OFCCP. The Q&A exchange is summarized below.

QUESTION & ANSWER SESSION

****Please note that these are paraphrased summaries and not direct quotes.****

QUESTION 1: IF WE ALREADY MEET THE COMPLIANCE REQUIREMENTS, WHY DO WE HAVE TO KEEP TRACKING YEAR AFTER YEAR TO PROVE WE ARE CONTINUING TO DO SO?

Answer: That is a good question. I do not have an answer for that. This has been discussed before.

Question 2: A contractor asked about the voluntary self-ID forms and how companies could meet the 7% goal of disabled employees in the workforce when employees do not want to identify this information.

Answer: This is not a quota. The long term goal is to create a culture where people are not stigmatized. Compare this change to the Pregnancy Discrimination Act and women being stigmatized in the workforce. We are still seeing women bring charges over the PDA. Likewise, it will take

years to correct the stigma of being disabled in the workplace, but that is the goal.

Question 3: A contractor commended the OFCCP on many of its recent proposed changes on various affirmative action related laws.

QUESTION 4: WHEN WILL WE SEE THE REVISED SCHEDULING LETTER [INFORMING YOUR COMPANY IT'S BEING AUDITED BY THE OFCCP]?

Answer: We are waiting on the OMB's blessing.

QUESTION 5: THERE IS A PROBLEM WITH UNIVERSITIES AND COLLEGES FITTING INTO THE AFFIRMATIVE ACTION PLAN MODEL. IS THIS BEING REVIEWED AND CONSIDERED?

Answer: Colleges are different beasts. What the OFCCP does is focus on the basics in audits. Compliance Officers need to know more about these differences. The OFCCP does want to look at this area, but due to the huge administrative load in changing the other regulations we have not gotten to this yet.

QUESTION 6: THE NEW SCHEDULING LETTER WILL REQUIRE THAT WE PROVIDE INFORMATION BY SUB-MINORITY GROUPS AND PERSONNEL ACTIVITIES THAT WILL BE DIFFERENT FROM WHAT WE CURRENTLY PROVIDE. IF THE NEW SCHEDULING LETTER IS APPROVED, BUT YOUR PLAN IS ALREADY COMPLETED FOR THE YEAR AND YOU RECEIVE AN AUDIT, WILL YOU HAVE TO RE-DO YOUR PLAN ACCORDING TO THE NEW SCHEDULING LETTER?

Answer: We have discussed this but have not made a decision. We will get back to you on this.

QUESTION 7: MANY OF US OUR WONDERING HOW THE NEW SECTION 503 PROPOSED CHANGES REGARDING REPORTING ON DISABLED PERSONS IN THE WORKFORCE IN AFFIRMATIVE ACTION PLANS AND ADA WILL WORK TOGETHER. CAN YOU ADDRESS THIS?

Answer: Many people are not aware that the ADA regulations provide for a specific exception for the purposes of allowing voluntary self-ID. It is not a conflict.

QUESTION 8: WOULD IT BE POSSIBLE TO CHANGE THE REQUIRED RESPONSE TO A SCHEDULING LETTER TO A 45 DAY PERIOD INSTEAD OF A 30 DAY PERIOD?

Answer: That is why we now send out the Corporate Scheduling Announcement Letter ("CSAL") to all contractors. It provides notice to everyone of the impending review so that there is no need for a 45 day window.

FOLLOW UP QUESTION: WHEN YOU HAVE A LARGE COMPANY WITH A SMALL HR GROUP, WE HAVE A LOT OF PLANS AND SHORT STAFF TO GET THEM DONE. SOMETIMES WE RECEIVE MULTIPLE REQUESTS AT ONE TIME AND IT IS DIFFICULT TO RESPOND IN 30 DAYS.

Answer: That is a good point and we will look at that. (Shiu had an advisor write this down.)

Question 9: *The question was about the recent [competition put out by the US DOL](#) (and Obama's National Equal Pay Enforcement task force, which Shiu is a part of) asking for the public to come up with an app to assist in leveraging equal pay for men and women. The question was, when will the winners be announced?*

Answer: April 17th

QUESTION 10: THE QUESTION ASKED ABOUT LARGE TECHNOLOGY AND UTILIZING INFORMATION WITH OTHER AGENCIES AND WITHIN THE AGENCY.

Answer: First, let me state that I am a big proponent of the Functional Affirmative Action Plan (FAAP) and we are getting back on track with that. Second, the OFCCP is working on its technology to capture all work of all audits across the country in real time. This will allow us to analyze and review our data and audits from all regions as a whole. As to whether any information on the computer system will be available to contractors, there may be aspects, but I do not know at this time.

MEETING WITH ILG CHAPTER REPRESENTATIVES

In her smaller meeting with the ILG Chapter Representatives, Shiu discussed making sure that the ILGs continue to focus on educating the contractor community. A large part of the

discussion centered around the lack of ability to reach smaller contractors and subcontractors. Shiu would like to see improvements in the education of subcontractors and wants contractors to clearly tell their subcontractors about affirmative action requirements.

Shiu commented that the Agency would rather see a bad Affirmative Action Plan ("AAP"), a half-way done AAP, or a poor AAP rather than no AAP. She stated that her office is aware that companies do not keep plans until an audit as a costs saving, and she understands such business decisions. However, she stated that companies do not have to take federal contractor money, and that if they don't want to comply with the regulations they should not take the money. She made clear that the day of giving out money without accountability is over.

The Director also spent time discussing the divide between HR staff who want to do the right thing, and corporate culture that will promote diversity but not Equal Employment Opportunity compliance/regulatory compliance. She wanted to discuss why this occurs, and there was a healthy discussion about reeducating the population on the term "affirmative action."

Shiu asked ILG representatives to share two websites that she believes are valuable even without the regulation changes. The first is the [DOL's Veterans Employment and Training Service page](#). She highlighted the Veterans Job Bank initiative for employers, and the "My Next Move" program that allows veterans to type in their service and translate it to civilian skills and job sets. She also cited the [DOL's Office of Disability Employment Policy website](#) as a way employers can find and hire qualified persons with disabilities.

SUMMARY

Director Shiu was energetic and enthusiastic about the Agency's proposed changes and the positive effects of hiring more disabled and veteran employees in the workforce. Shiu provide clear information on the OFCCP's positions, and solidified the relationship between the OFCCP and ILG chapters under her administration.