

Federal Affirmative Action and EEO

Assessing 2025 to Predict 2026

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Our Presenters



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DCI: Data Driven – Client Focused

Our Mission

Advancing non-discrimination and fairness in the workplace by implementing merit-based and skill-focused employment practices.

Our Vision

We believe every person deserves equal opportunity and fair treatment in the workplace and beyond.

How DCI Can Help



Compliance

- VEVRAA and Section 503 AAPs
- State affirmative action and non-discrimination
- EEO-1 and VETS-4212 reports
- DOL compliance review support
- State pay reporting
- Pay transparency
- Proactive guidance on regulatory change
- DEI risk mitigation



Selection and Assessment

- Job analysis
- Selection procedure development and validation
- Expert evaluation/bias audit of HR systems, including artificial intelligence



Workforce Analytics

- EEO disparity analyses
- Damage calculations
- Non-discrimination in employment plans
- Reduction-in-force analyses
- Barrier analyses



Pay Equity and Compensation

- Pay equity studies
- EU Pay Transparency
- Pay compression studies
- Wage gap studies
- Job architecture development
- Market benchmarking
- Pay band creation
- Executive compensation reviews
- Bonus program reviews



Litigation Support

- Consulting expert in applied research in class action litigation
- Testifying expert in case strategy, expert reports, & sworn testimony
- Expert reviews of AI-based hiring procedures

Webinar Format

- Participant phone lines are **muted**
- **Submit questions** by sending an email to questions@dciconsult.com
- If you have any **technical difficulties during the call**, please email questions@dciconsult.com

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Executive Overview

Assessing the Impact of Federal Changes in 2025

Current Stakeholder Activities

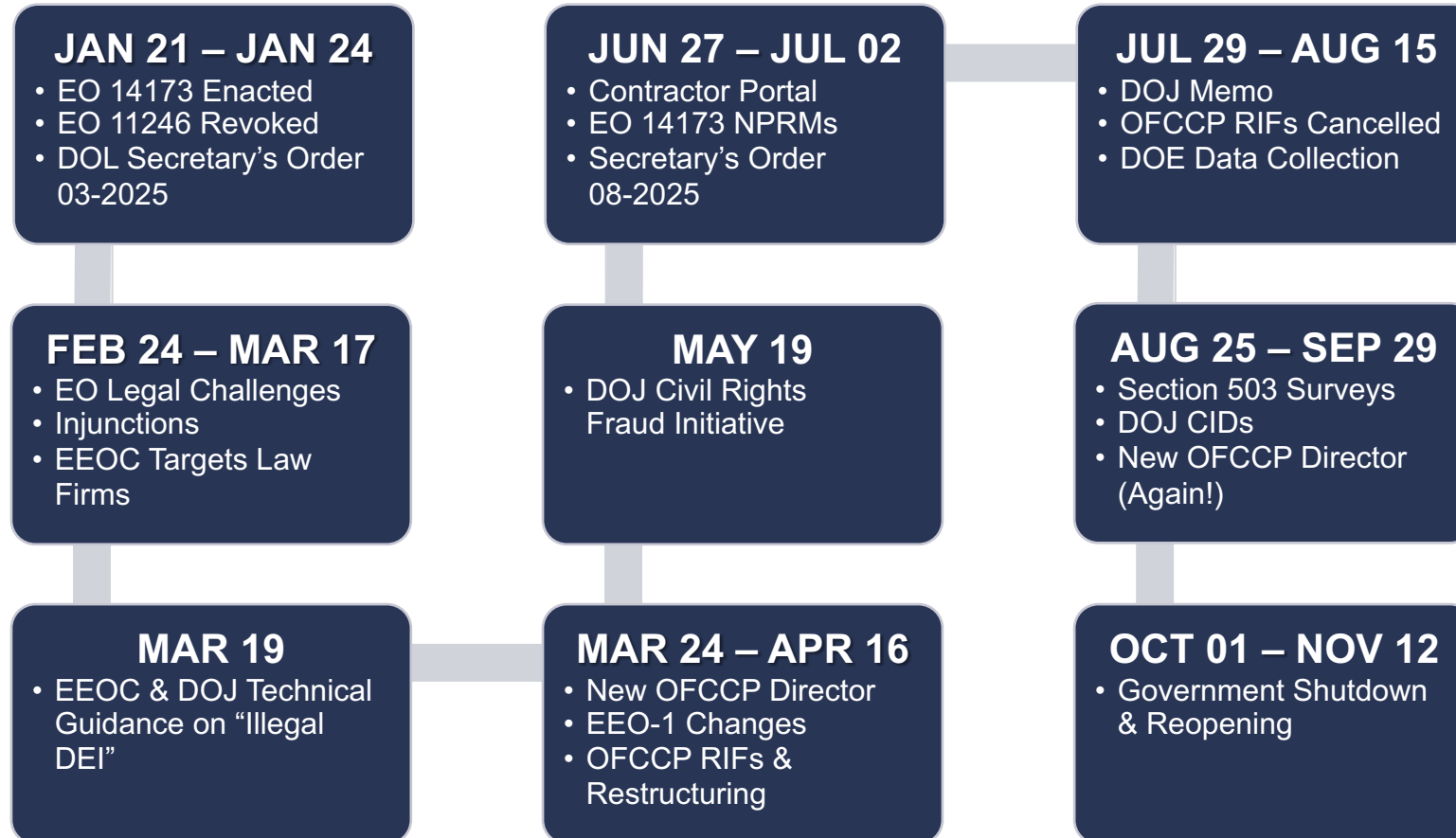
From EO 11246 to 2026 Predictions

Assessing the Impact of Federal Changes in 2025

Past

Major Milestones of 2025

Compliance Shifts in the First 295 Days



EO Activity & Enforcement Pause

JAN 21 – JAN 24

- EO 14173 Enacted
- EO 11246 Revoked
- DOL Secretary's Order 03-2025

JAN 21

EO 14173 “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” Enacted

- EO 11246 revoked
- Requires federal contractors to certify they do not engage in illegal discrimination, including illegal DEI using the False Claims Act
- Requires each agency to identify up to nine potential civil compliance investigations

JAN 24

Acting DOL Secretary's Order 03-2025

- Immediate cessation of all EO 11246 enforcement activity
- EO 11246 audits are administratively closed
- Section 503 and VEVRAA audits are put into abeyance

EO Legal Challenges & New Enforcement

FEB 24 – MAR 17

- EO Legal Challenges
- Injunctions
- EEOC Targets Law Firms

FEB 21

Democracy Forward Files First EO 14173 Injunction

FEB 24

Administration Files Appeal

MAR 14

Motion for a Stay Pending Appeal Granted

- Enforcement of EOs allowed while matter is adjudicated

MAR 17

EEOC Begins Enforcement by Targeting 20 Law Firms

- Letters sent requesting documents and data related to employment decisions including selection for diversity internships and partnerships

First Guidance on EO 14173 Issued

MAR 19

- EEOC & DOJ Technical Guidance on “Illegal DEI”

MAR 19

EEOC and DOJ Release Two Technical Assistance Documents outlining what constitutes “illegal DEI”

- “What to Do If You Experience Discrimination Related DEI at Work”
 - One-pager for the general public and/or employees
 - Discusses disparate treatment; limiting, segregating, and classifying; harassment; and retaliation
 - Reminds audience that EEOC and DOJ may investigate and file lawsuits
- “What You Should Know About DEI-Related Discrimination at Work”
 - Longer Q&A style document
 - Provides examples

OFCCP Shake-up, EEOC Stays the Course

MAR 24 – APR 16

- New OFCCP Director
- EEO-1 Changes
- OFCCP RIFs & Restructuring

MAR 24

New OFCCP Director Appointed

- Catherine Eschbach

MAR 26

EEOC Chair Renominated

- Andrea Lucas

APR 15

EEOC Proposes “Non-Substantive” EEO-1 Filing Changes

- Federal contractor reporting requirements
- Non-binary reporting

APR 16

OFCCP Begins Reducing Workforce

- Hundreds of workers put on Administrative Leave
- SWARM (Southwest and Rocky Mountain) Office is left untouched

DOJ Leans Into EO 14173 Enforcement

MAY 19

- DOJ Civil Rights Fraud Initiative

MAY 19

DOJ Announces Civil Rights Fraud Initiative (CRFI)

- Use of the False Claims Act to investigate and pursue claims of federal civil rights law violations
- Coordination with other Federal Agencies including DOE, Health & Human Services, HUD, and DOL, as well as state attorneys general and local law enforcement

OFCCP Gets Active

JUN 27 – JUL 02

- Contractor Portal
- EO 14173 NPRMs
- Secretary's Order 08-2025

JUN 27

Letter from Director Eschbach to Federal Contractors

- Voluntarily submit statement of compliance with EO 14173 & rescission of EO 11246
- Repurposing of Contractor Portal to accept statements

JUL 01

Notices of Proposed Rulemaking

- Proposed revisions to regulations for EO 11246, VEVRAA, and Section 503
- Overhaul of Section 503 regulations including rescission of disability self-id surveys, 7% utilization goal, data collection regulation

JUL 02

DOL Secretary's Order 08-2025

- Resumption of Section 503 and VEVRAA enforcement for complaints
- All pending Section 503 and VEVRAA reviews to be closed
- OFCCP certification period remains closed

Enforcement Picks Up Momentum

JUL 29 – AUG 15

- DOJ Memo
- OFCCP RIFs Cancelled
- DOE Data Collection

JUL 29

DOJ releases memo on how to identify “illegal DEI” programs

- Memo audience: Other Federal Agencies working with “Federal Funds Recipients”
- Introduces the idea of “Unlawful Proxy Discrimination”

AUG 07

DOE directed to overhaul & expand data collection

- Reaction to ruling in *Students for Fair Admissions v. Harvard*
- New collection requirements for undergraduate and graduate admission data for 2025-2026 academic year and five prior academic years

AUG 15

DOL Halts OFCCP Layoffs

- Approximately 20% workforce reduction due to attrition
- Rescission of layoffs intended to maintain workforce continuity and support critical roles during restructuring

OFCCP Activities

AUG 25 – SEP 29

- Section 503 Surveys
- DOJ CIDs
- New OFCCP Director (Again!)

AUG 25

OFCCP Proposes Revised Section 503 Survey Obligation

- Proposed elimination of voluntary self-identification survey for applicants and employees
- Describes revisions that would be implemented *if* July 1 NPRM is accepted

MID-SEP

DOJ Sends First Civil Investigative Demands

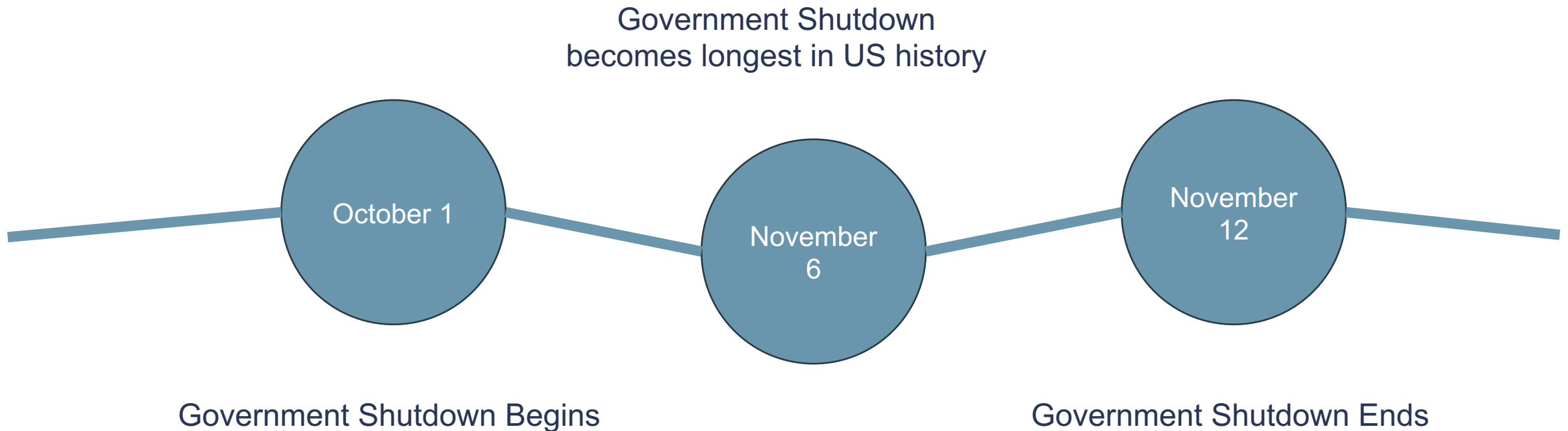
- Civil investigative demands (CIDs) are part of the Civil Rights Fraud Initiative
- CIDs solicit information about employers' DEI initiatives without court approval

SEP 29

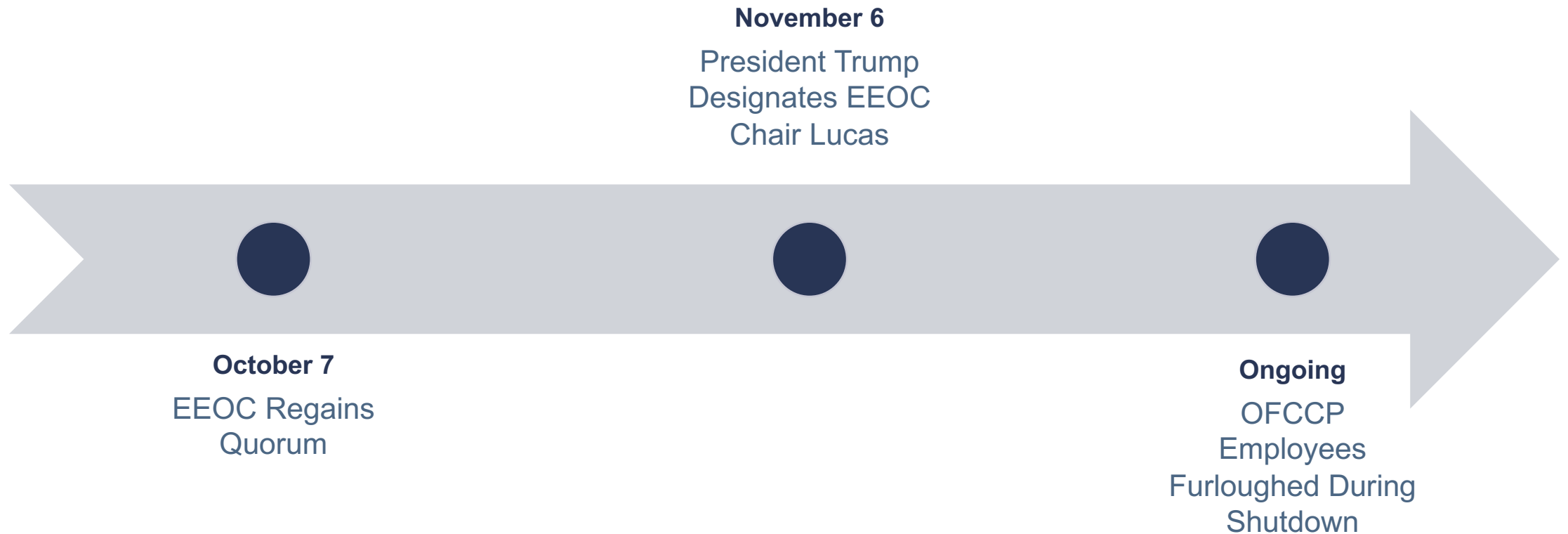
OFCCP Announces New Director

- Ashley Romanias, formerly Senior Policy Advisor at DOL
- Catherine Eschbach takes new role as Principal Deputy General Counsel at EEOC

2025 Shutdown Timeline



EEOC v OFCCP During Shutdown



Current Stakeholder Activities

Present

Comment Review Paused by Shutdown

Do *Public Comments Favor or Oppose* OFCCP's Proposed Changes to the Disability Regulations?

- Public comments on the Section 503 NPRM were due September 17, 2025.
- As of September 23, 2025, there were 637 unique public comment submissions on regulations.gov.
- DCI Consulting analyzed 612 unique submissions.

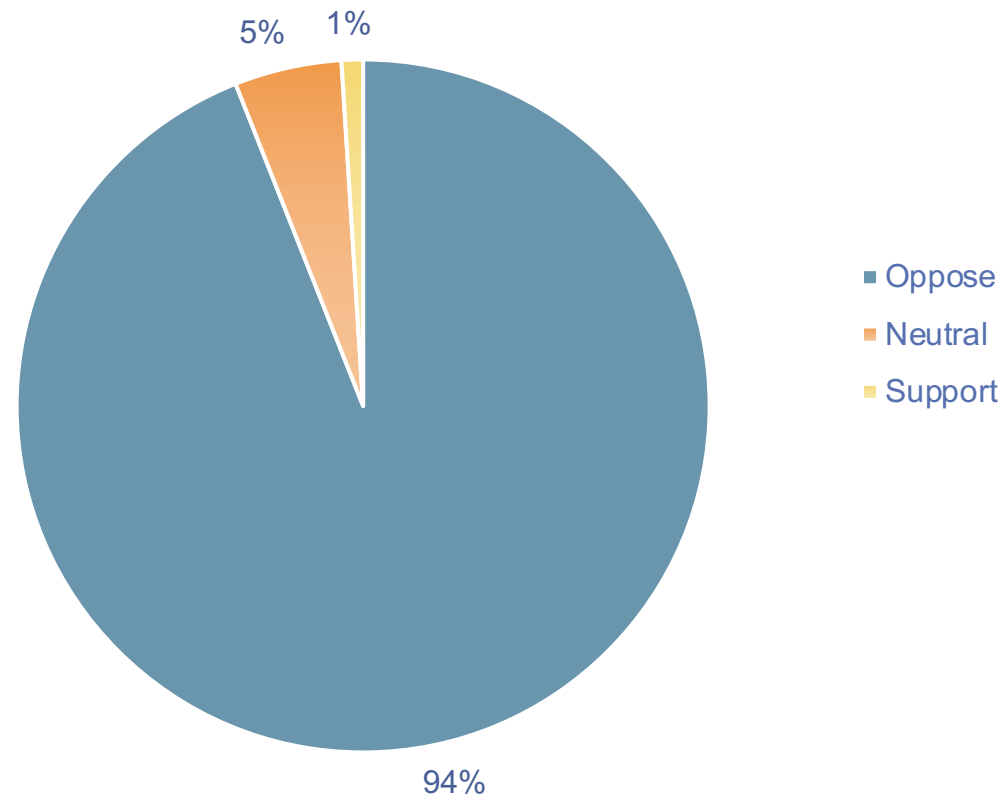
Source: <https://blog.diconsult.com/public-comments-oppose-proposed-ofccp-changes>

Comments Review of Section 503 NPRM



Read the
Blog

Do Public Comments Favor
or Oppose Revisions?



Industry Dialogue



MILWAUKEE
ILG



Interpreting the Results

Key Insights

- Clear most individuals and organizations did not support OFCCP's proposed changes to Section 503
- Decades of progress with disability inclusion at risk due to elimination of key tools
- Disability inclusion requires intentionality, measurement, and commitment
- OFCCP must weigh the regulatory simplification with the ability to ensure parties contracting with the federal government are meeting obligations

Industry Dialogue

What's Happening Now?

- NILG National Conference cancelled 2025-2027
- Julie O'Hara-Harvey, NILG Chair, shared with the BILG that Regional ILG Conferences are ahead
- SHRM BLUEPRINT event held October 26-29, 2025, with support from DCI Consulting and NILG

Public Appearances

Who Showed Up at SHRM BLUEPRINT?



Public Speeches

What Did We Learn?

- The law has not changed, but priorities have shifted
- With an EEOC quorum, many commission voted documents can be rescinded
- A lack of clarity and communication on what constitutes “illegal DEI”
- Demographic data on applicants and employees acceptable
- Workforce analytics to identify discrimination are encouraged and acceptable but be mindful of who has access to this type of data
- Self-audit programs, like OSHA, may be coming for OFCCP
- SHRM BLUEPRINT for an **Inclusion Strategic Plan**
 - Cohort experience that allowed discussion around inclusion, buy-in, and accountability strategies

From EO 11246 to 2026 Predictions

Future Predictions

Civil Investigative Demands

Prediction #1

Continued issuance of civil investigative demands (CIDs) from Department of Justice asking for information about employers' respective DEI programs.



Annual Certification of EO 14173

Prediction #2

The active proposed regulation that is being reviewed to implement Executive Order 14173 becomes final, requiring annual certification of two things.

1

The contractor or grant recipient is NOT engaged in “illegal” DEI.

2

The contractor or grant recipient is complying with federal anti-discrimination laws.

Planning for Annual Certifications

DEI Risk Assessments on the Rise



Additional EO 14173 Considerations

Continued issuance of civil investigative demands (CIDs) from Department of Justice asking for information about employers' respective DEI programs.



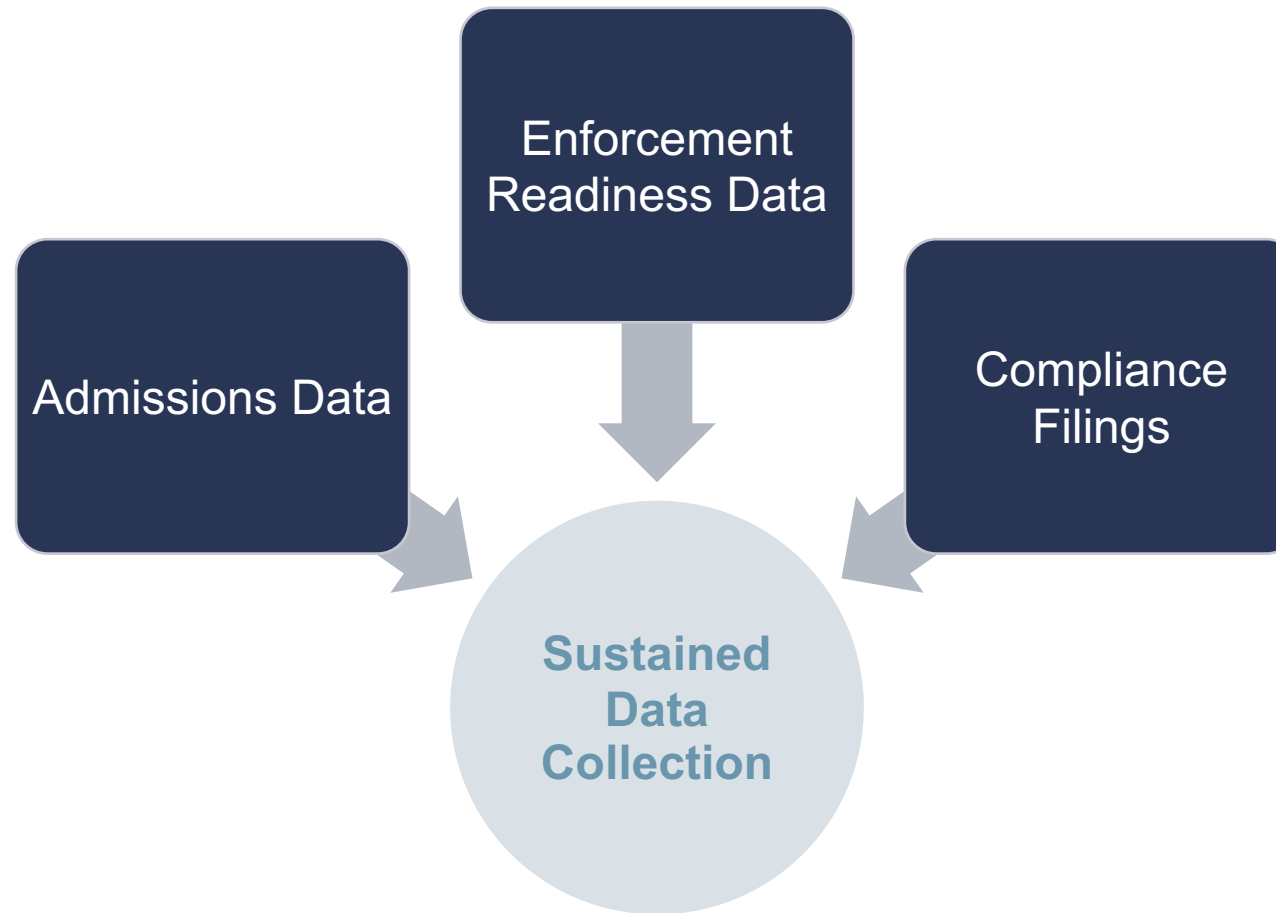
Preparing for CIDs

Action Planning

- Assess DEI programs
- Review pay equity processes
- Document the process by keeping clear records of how DEI and pay equity decisions
- Stay informed on the evolving enforcement landscape
- Coordinate with legal counsel immediately

All Signs Point to Data Collection

Prediction #3



DOE Expanding Scope of Collection



Beyond Employees

- Presidential Memorandum
- Initiated during the 2025-2026 school year
- Race and sex of applicants, students that transfer in, admitted students, and enrolled students

Preparing for Agency Enforcement



Defense Readiness

- Workforce Analytics
- Potential Annual Certifications
- Civil Investigative Demands

Compliance with Reporting Requirements

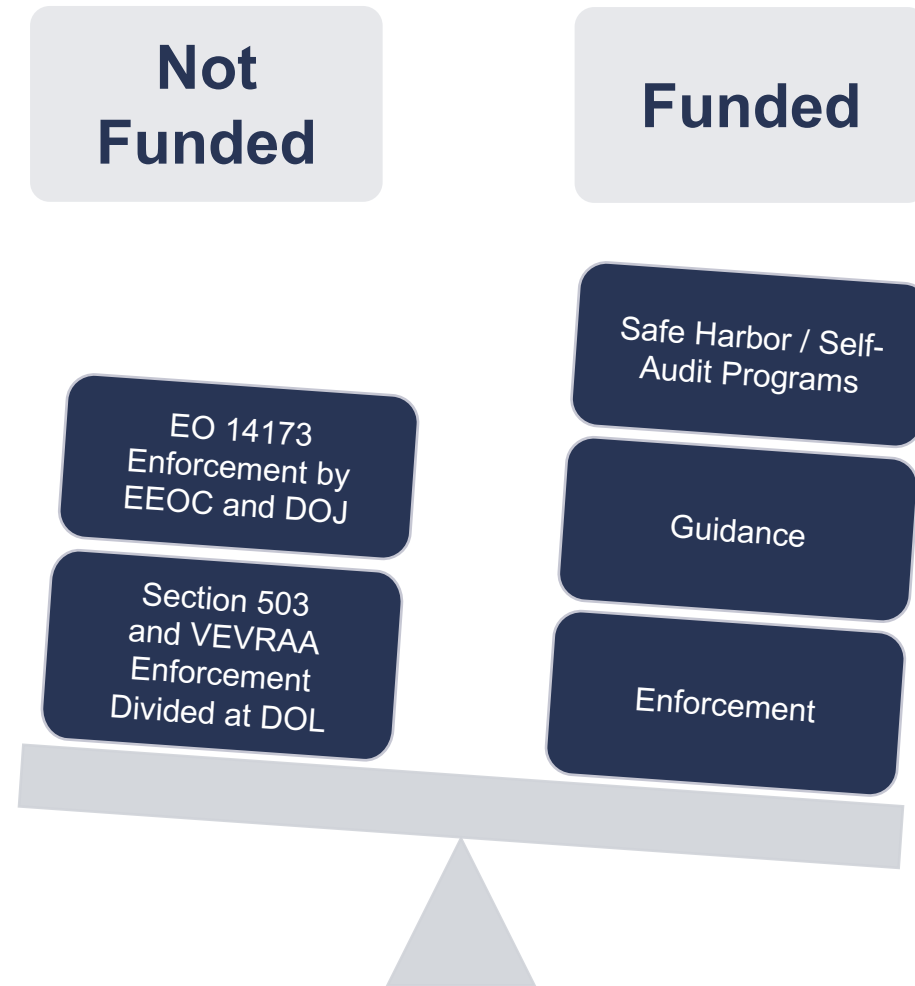


Demographic Data

- Federal (e.g., EEO-1, VETS-4212)
- State/Local (e.g., CA Pay)

Future of OFCCP

Prediction #4



Increasing Policy at State/Local Level

Prediction #5

Increased obligations.

1

EO 11246-like
compliance
requirements at the
state level for state
contractors.

2

Pay data reporting
and transparency for
all employers with a
state presence.



State & Local Regulation Resources

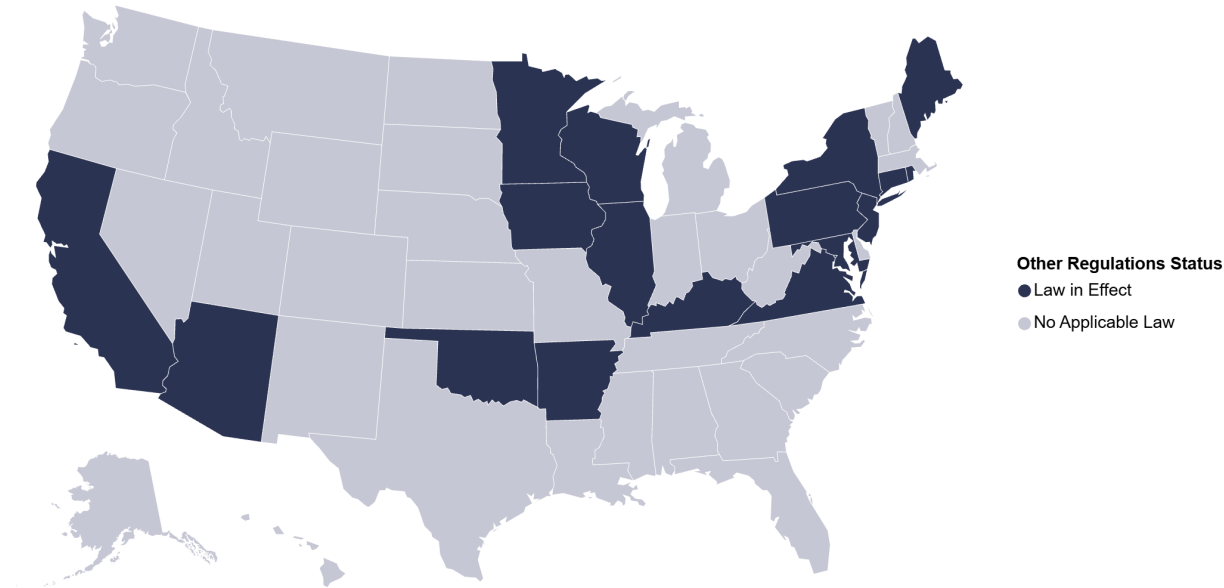
Stay current by visiting DCI's State Legislation Tracker under Resources on our website!

State Affirmative Action and Nondiscrimination Requirements

States with Additional Legislation Governing Affirmative Action Reporting

Map

Details



Path Forward

Continuing to Seek Opportunities Despite Uncertain Times

2026 Strategic Considerations

Guiding decisions moving forward

- Enforcement of Section 503 and VEVRAA despite OFCCP's uncertain future
- Implementation of “certification” under False Claims Act
- Focus on “proxy discrimination”
- Concerns around data governance
- Rise in plaintiff bar complaints that are not pursued by federal agencies

Opportunities Despite Uncertainty

Concluding Thoughts

- EEO and non-discrimination remain focal areas for federal contractor / subcontractors
- Data collection and analytics aid employers
- DEI programs can withstand scrutiny when properly designed and implemented
- Leadership and professionals continue to adapt to swift change

Recognition for HR-related Professions



Driving Sustainable Organizational Change in Uncertain Times

- Navigated pandemic and work-from-home transitions with resilience and adaptability
- Implemented programs to support mental health, resilience, and work-life balance during periods of uncertainty
- Served as a strategic partner to executive leadership during times of crisis and transformation
- Led return-to-work strategies, ensuring smooth organizational adjustment
- Executed reduction-in-force initiatives with strategic analytics and clear communications
- Interpreted and ensured compliance with rapidly evolving policies
- Identified skill gaps and implemented upskilling/reskilling programs
- Developed policies and procedures for integrating artificial intelligence into daily operations
- Designed and implemented strategies to foster a culture of respect, inclusion, and belonging
- Maintained and advanced DEI programs aligned with organizational goals

Thank you for your attention!

Questions?

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