



OFCCP Enforcement Update for FY2017

**2017 National ILG Conference
San Antonio, TX**

Presenter:

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About DCI

- www.dciconsult.com
- DCI is a risk management/human resource management consulting firm strategically located in Washington, D.C.
- Primary focus on EEO/Affirmative Action compliance statistical analyses, and validation research
- Developed proprietary software for AA Planning/Adverse Impact Analyses and Compensation Analysis.
- Diverse client base of fortune 500 and smaller organizations developed primarily through company/attorney referral.
- Consulting services include:
 - Affirmative Action Plan Development
 - Statistical Analyses of Systemic Discrimination Allegations (e.g., hiring, promotion, compensation, etc.)
 - Selection Procedure Validation
 - Proactive EEO Audits
 - Litigation and OFCCP Audit Consulting



Agenda

- **OFCCP Litigation Update**
- **Cases of “Interest”**
- **FY2017 Enforcement Update**





OFCCP Litigation

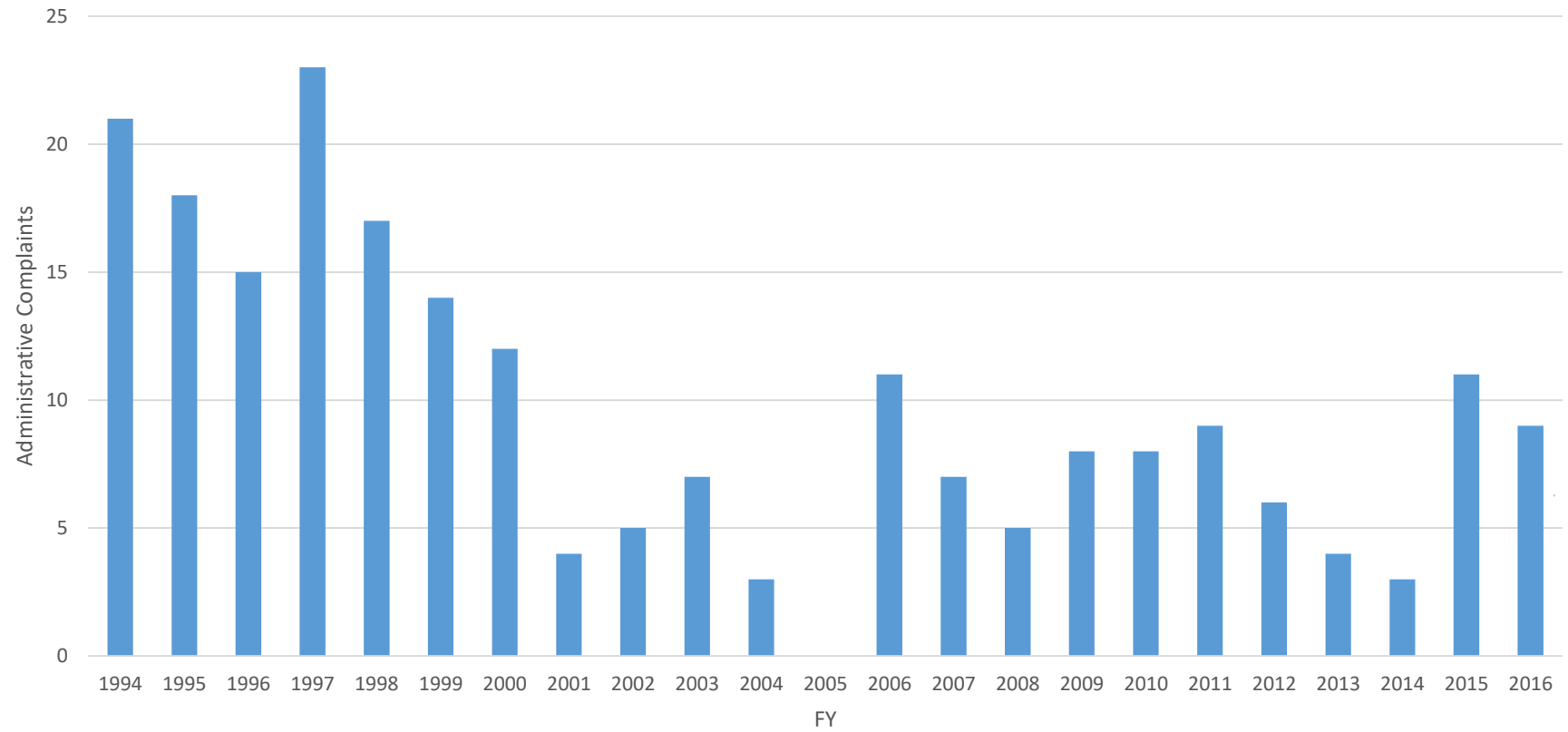


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Total Administrative Complaints

Total Administrative Complaints



OFCCP Litigation

- **FY2016 – OFCCP filed 9 administrative complaints**
 - 1 Denial of Access
 - 6 Hiring Discrimination
 - 1 Steering, Harassment and Termination
 - 1 Hiring, Compensation and Promotion
- **FY2017 – OFCCP filed (to date) 11 administrative complaints (*Note: 8 of 11 were filed in January*)**
 - 5 Denial of Access
 - 3 Compensation
 - 2 Hiring
 - 1 Hiring and Compensation



Cases of Interest

- ***Google*—Denial of access case filed by Obama Administration**
 - Initial ALJ decision focused on amount of company’s federal contract versus cost to provide data requested
 - Found request unreasonable
 - 2nd ALJ hearing was abruptly adjourned
- ***Oracle*—Pay discrimination**
 - DOL claimed Oracle paid white men more than women, black and Asian employees
 - Oracle claimed case “politically” motivated

Cases of Interest

- ***Palantir*—Hiring discrimination**
 - DOL claimed company systemically discriminated against Asian job applicants in its hiring practices
 - Company also claims its support of President Trump was motivated for lawsuit
- ***JP Morgan Chase*—Pay discrimination**
 - DOL claimed that company paid 93 women tech employees less than similarly situated men
 - Company just settled EEOC pay lawsuit for \$1.45M



Cases of Interest

- ***Bank of America***—paid \$1M to settle hiring case for 1,027 black applicants
 - Case began from 1993 audit of predecessor NationsBank
- ***Land O' Lakes***—paid \$42,000 to settle allegations of pay discrimination
 - DOL alleged company paid female livestock production specialist less than men
 - Conciliation agreement provides that company cannot use prior salary solely to determine starting pay

Cases of Interest

- ***LexisNexis***—agreed to pay \$1.2M to settle pay discrimination
 - DOL claimed company paid women in operational positions “substantially less” than men in those jobs
 - The settlement covered 211 women
- ***American Ordnance***—agreed to pay \$50,000 to settle disability discrimination claims



Cases of Interest

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- **Impact of OFCCP audits on recent lawsuits**
- ***Qualcomm*—Pay discrimination**
 - OFCCP tied the conciliation agreement with Qualcomm to the recent private sex discrimination settlement of \$19.5M
 - According to the OFCCP the private settlement “shall provide an effective remedy for female engineers identified by OFCCP.”
- ***Dindinger v. Allsteel, Inc.*—8th Circuit held that the company could not use results of OFCCP audit to defend its pay practices**



A Decade (or more) of Enforcement Statistics

Data Sources: www.ogesdw.dol.gov & FOIA

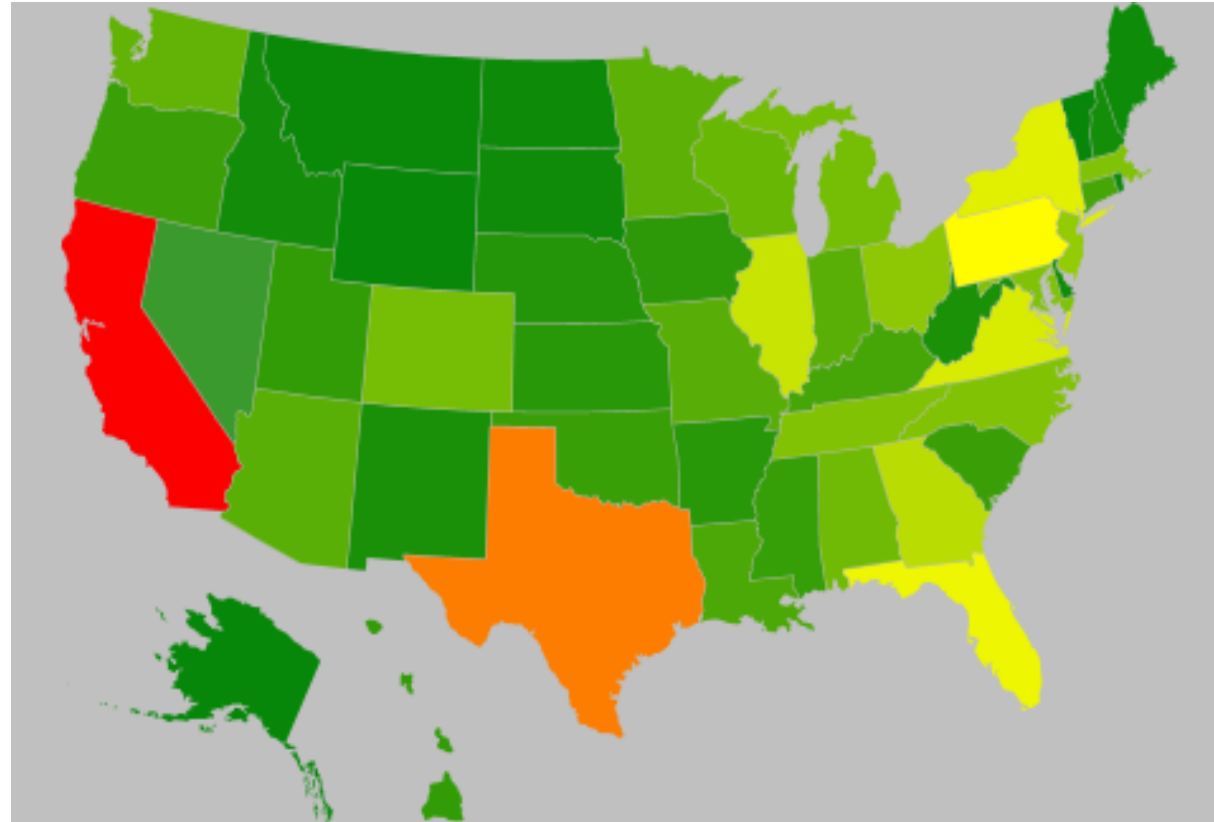
Enforcement Over Time



Fiscal Year	Letter of Compliance		Notice of Violation						Total Compliance Evaluations
			Conciliation Agreement		Consent Decree		Financial Remedy		
	#	%	#	%	#	%	#	%	#
2004	4,938	93.63%	277	5.25%	0	0.00%	59	1.12%	5,274
2005	1,921	90.61%	146	6.89%	0	0.00%	53	2.50%	2,120
2006	3,559	88.64%	383	9.54%	0	0.00%	73	1.82%	4,015
2007	4,390	89.17%	471	9.57%	0	0.00%	62	1.26%	4,923
2008	3,701	85.57%	539	12.46%	5	0.12%	80	1.85%	4,325
2009	3,204	82.01%	618	15.82%	9	0.23%	76	1.95%	3,907
2010	4,019	81.32%	839	16.98%	3	0.06%	81	1.64%	4,942
2011	2,898	72.32%	999	24.93%	9	0.22%	101	2.52%	4,007
2012	2,676	66.78%	1199	29.92%	6	0.15%	126	3.14%	4,007
2013	2,965	72.32%	1037	25.29%	2	0.05%	96	2.34%	4,100
2014	3,245	85.34%	501	13.17%	2	0.05%	54	1.42%	3,802
2015	2,136	82.05%	431	16.55%	1	0.05%	35	1.34%	2,603
2016	1,338	78.94%	317	18.70%	2	0.12%	39	2.24%	1,696
2017*	469	79.63%	98	16.64%	3	0.51%	20	3.23%	589
Total	41,459	82.41%	7,855	15.61%	42	0.08%	954	1.89%	50,310

* As of 4/13/17

Total Number of Compliance Evaluations

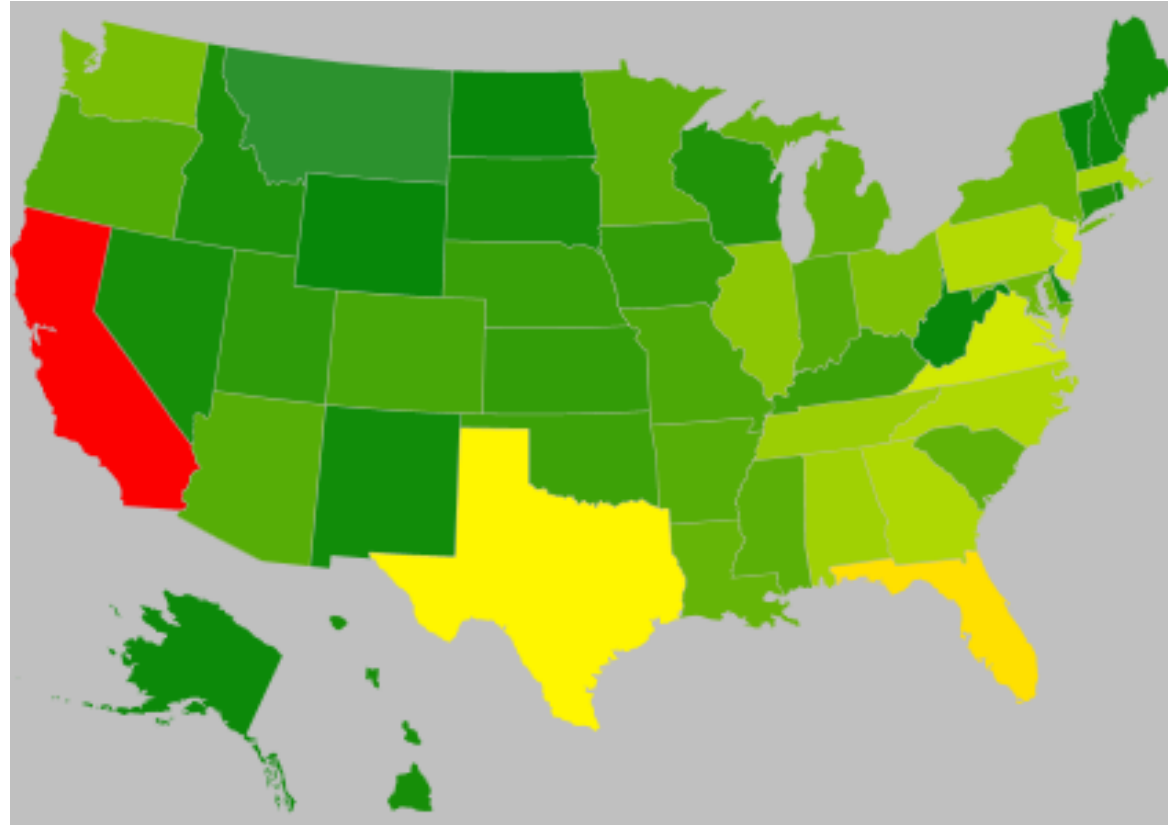


Compliance Evaluations Closed from FY 2004 – 2016
Heat map goes from dark green to red





Total Financial Settlements



Compliance Evaluations Closed from FY 2004 – 2016
Heat map goes from dark green to red

Findings of Discrimination

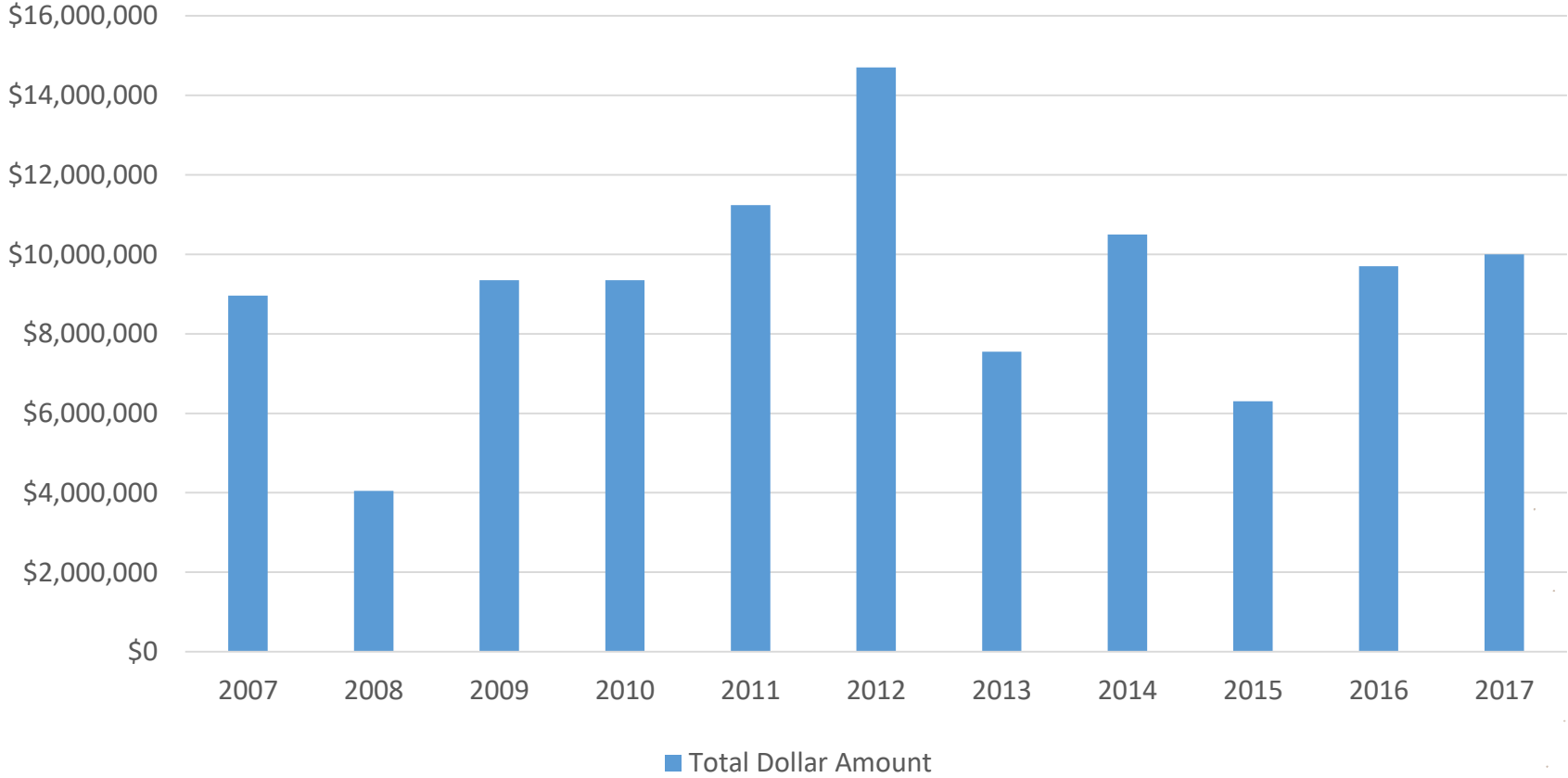


FY	Hiring/Treatment		Promotion		Termination		Testing		Salary		Total	
	#	%	#	%	#	%	#	%	#	%	#	%
2004	50	87.72%	0	0.00%	1	1.75%	1	1.75%	5	8.77%	57	100%
2005	41	80.39%	0	0.00%	0	0.00%	1	1.96%	9	17.65%	51	100%
2006	61	87.14%	0	0.00%	0	0.00%	3	4.29%	6	8.57%	70	100%
2007	57	86.36%	0	0.00%	0	0.00%	5	7.58%	4	6.06%	66	100%
2008	68	82.93%	1	1.22%	1	1.22%	6	7.32%	6	7.32%	82	100%
2009	65	84.42%	0	0.00%	0	0.00%	8	10.39%	4	5.19%	77	100%
2010	55	73.33%	2	2.67%	1	1.33%	2	2.67%	15	20.00%	75	100%
2011	54	60.67%	2	2.25%	0	0.00%	6	6.74%	27	30.34%	89	100%
2012	55	59.14%	1	1.08%	0	0.00%	6	6.45%	31	33.33%	93	100%
2013	41	60.29%	2	2.94%	1	1.47%	5	7.35%	19	27.94%	68	100%
2014	33	67.34%	0	0%	1	2.04%	4	8.16%	11	22.44%	49	100%
2015	26	74.28%	0	0%	1	2.86%	3	8.57%	5	14.29%	35	100%
2016	24	61.54%	0	0%	1	2.56%	4	10.26%	10	25.64%	39	100%
2017	13	65.00%	0	0%	0	0%	0	0%	7	35.00%	20	100%
Total	642	73.79%	8	0.92%	7	0.80%	54	6.21%	159	18.28%	871	100%



Financial Settlements

Total Dollar Amount



2017 results are as of June

Complaints

FY	# of Complaints filed with OFCCP	# of Complaints filed with EEOC
2012	176	99,412
2013	232	93,727
2014	148	88,778
2015	101	89,385
2016	147	91,503
2017	52 (as of April)	-

- FY 2016 Breakdown of OFCCP Filed Complaints

- Protected Veteran Complaints –34% (50/147)
- Race/Ethnicity and Sex Complaints –33% (48/147)
- Disability Complaints –29% (43/147)

- FY 2016 Findings of Discrimination

- 3 Settlements totaling \$142,917
 - 1 Reasonable Accommodation (Violated 503)
 - 1 Wrongful Termination (Violated 503)
 - 1 Retaliation (Violated 11246)





Questions?

David B. Cohen

David Cohen is President of DCI Consulting Group, Inc. and Senior Vice President of The Center for Corporate Equality (“CCE”). He provides consulting services to employers and management law firms on a wide range of human resource risk management strategies, particularly in the areas of EEO/affirmative action program development, systemic compensation statistical analyses, comprehensive human resources self-audits, and employee selection and test validation.

Recognized as a national EEO and affirmative action compliance expert, Mr. Cohen speaks frequently before corporate leaders from Fortune 500 companies, and at regional and national ILG conferences and OFCCP events. In 2006, he co-authored a book entitled *Understanding Statistics: A Guide for I/O Psychologists and Human Resource Professionals*, which was published by Thomson Wadsworth. Mr. Cohen is also the Associate Editor of the *Applied HRM Research*.

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