Testimony Before The Committee on Education and the Workforce
U.S. House of Representative

Reviewing the Impact of the Office of Federal Contract Compliance Programs' Regulatory and Enforcement
Actions
Wednesday, April 18, 2012
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Chairman Roe and other members of the Committee, I am honored for the opportunity to speak to you as a representative of St. Jude Children's Research Hospital and share with you my experience with the Affirmative Action Planning process.

Background
St. Jude Children's Research Hospital (St. Jude) was founded in 1962 by the late entertainer Danny Thomas, who believed that no child should die in the dawn of life. Since inception, St. Jude has been not only a hospital, but also an academic research center. In fact, St. Jude has changed the way the world treats childhood cancer and other life-threatening diseases. Supported largely by donations, St. Jude is a non-profit institution where no family pays for medical care, and for every child treated here, thousands more have been saved worldwide through St. Jude discoveries. Our 3,700 employees hail from more than 80 countries and every continent except Antarctica. St. Jude receives more than 30,000 applications annually and hires about 600 employees each year. We are a government contractor and stand-alone organization; consequently, we only create a single affirmative action plan. More complex organizations, including hospitals with multiple locations and services (e.g., hospitals, hospice care, nursing homes, outpatient surgery) may be required to complete multiple plans.

I have 17 years of experience in Human Resources, with all but two of these years at St. Jude. I have worked in Compensation, Human Resources Information Systems (HRIS), Immigration, Benefits and Employment. I have 15 years of experience in HRIS and seven years of experience in employment. My current title is Director of HRIS, Employment and Immigration. In my 15 years at St. Jude, we have been audited by the Office of Federal Contract Compliance Programs (OFCCP) three times, with the most recent audit starting and concluding in 2009. During these 15 years, my exposure to Affirmative Action Planning (AAP) has increased to the point that I am now responsible for aspects of our plan including, general compliance and communication, and I also serve as the main contact for any audits.

In the paragraphs that follow, you will see what the AAP process looks like when put into practice in the real-world setting of a pediatric research hospital. To say the process takes an insignificant number of hours and dollars would grossly underestimate the time, effort, resources and costs required to collect, store and process data, create the actual AAP, construct and implement a meaningful action plan based on the AAP results, conduct outreach efforts, coordinate with linkage sources, stay current as to new and pending regulations,

comply with new regulations and ensure ongoing staff training. If I had to estimate the actual hours spent by St Jude's team in preparing St. Jude's AAP, it would vary from a minimum of 300 to 600 person hours over the course of a year. For the current AAP year, based upon our current initiatives, I expect for St. Jude employees to spend 500 hours on affirmative action duties that are in addition to their day-to-day affirmative action duties. The estimated cost of these expenditures, including consulting and the hours of additional effort is approximately $58,000. If our institution is audited, then another 200 to 400 hours can be added to this effort. Our last audit was in 2009. St. Jude employees spent, conservatively estimated, 400 hours working on this audit with an estimated cost of $37,000, including legal fees, consulting fees and cost of employee efforts. However, this does not fully capture the costs or effort. The necessary infrastructure must exist and continue to be maintained. Software systems must be selected, installed, tested, set-up, upgraded and maintained along with the necessary hardware. Document storage systems, including onsite files, offsite files and electronic storage must be also be created and maintained. And day-to-day compliance is built into the jobs and responsibilities that our HR teams carry out daily. There are real hours and dollars included in the cost of building and maintaining this infrastructure and to get to the point where you have a viable program. The time, effort and costs are not included because it is not simple to determine; however, it would easily double or triple the time, effort and costs I have already quoted. In short, creating an AAP is not merely running a few reports and submitting the results to the OFCCP. It's an intensive process that St. Jude must take seriously or else face penalties.

I sincerely hope that you as members of the U.S. Congress will agree that as important a mechanism as the Affirmative Action Plan is, there is indeed an opportunity to improve the process so that it is more streamlined and productive and becomes the meaningful and efficient process it was intended to be.

Creating the Affirmative Action Plan
The first requirement in creating an AAP is to have the systems and staff in place to collect and produce the required applicant and employee data. At St. Jude, we have a team of professionals dedicated to HRIS (8.3 full-time equivalents). This team is responsible for selection, installation, testing, troubleshooting, reporting and daily maintenance of HR systems in conjunction with applicable technical professionals in our Information Sciences Department and our vendors. We have two systems that hold data required for our AAP—an applicant tracking system (ATS) and an HR/Payroll system (HRMS). The ATS handles the collection and storage of applicants, applications, resumes, other documents and demographic elements about applicants for all open positions. Any candidates selected for a position are then fed to our HRMS through an interface, and the employment history of the employee is tracked in this system. These systems require regular interaction and maintenance in order to code, collect, endure date integrity and store the applicable data and documents.

To pull the data required for the AAP, the appropriate table and coding structure must exist in the applicable software systems, and then the reports must be developed to extract the data for the required timeframes. I was personally involved in the creation of all the current reports used by St. Jude, which easily took 400 person hours. The reports in the ATS were developed using report writing software by the HRIS team at St. Jude in conjunction with our ATS vendor. The reports in our HRMS were developed by a programmer at St. Jude due to the complexity of pulling historical information from the applicable data files in this system and the computer programming knowledge needed.   Over time, these reports continue to be refined and tweaked

annually. Depending upon the change, this effort can take from a matter of minutes to about 10 hours. An example of a recent "tweak" is adding the address of the applicant at the time the application was submitted. This has allowed us to better understand where, from a geographic perspective, we get our applicants, which then corresponds to a more accurate estimate for factor weights used to create our availability statistics. This relatively small tweak took more than 5 hours to complete. The time and effort to set up computer systems, create useful reports and continue to update systems and reporting as needed will vary widely dependent upon the resources available at an institution and the computer systems being used.

In total, our team generates and audits 10 reports each year that contain the raw data used to create our AAP. Because of the volume of data, it is inevitable that coding errors and other discrepancies will exist. Attempts are made to find and correct any deficiencies in the data.   Because we use two systems, certain data from these systems must be compared and validated against each other. For example, every selected candidate in our ATS must match a corresponding record for a hire, rehire, promotion, demotion or transfer record in our HRMS.   Each year there are a handful that do not match. A common reason for this discrepancy is the person's name has changed from the time she or he applied for the position and the date of hire. However, failure to correct this prior to sending our data to our affirmative action vendor will create an error when creating our plan. Consequently, we try to find and correct this on the front end. These sorts of data errors are unavoidable, whether due to human error or a process or computer system issue.

We start our initial report/auditing process in late September each year. This is to start identifying any potential errors or issues that will need to be addressed and corrected. Our plan year runs from October 1 to September 30. By the end of October all data regarding filled positions, hires, promotions, separations and applicable pay increases for the AAP plan year are complete and closed in both of our computer systems, and the reports have been validated and are ready to be sent to our affirmative action vendor.   Annually, the auditing, production and validation of our reports for our AAP take about 25 to 40 hours.

Our next step is to forward our raw data to our affirmative action vendors. St. Jude has elected to enlist an outside vendor because the skills, knowledge and expertise necessary to compile and run the applicable statistical analyses are not something we have on our current team. Without our outside vendor I can say with certainty the task of completing an AAP each year would be beyond the ability of the St. Jude team. Literally we could not do it ourselves.

Once our affirmative action vendor receives our data, the vendor runs a series of validation processes.   They compare our current year data to previous year data and then ask us to validate any changes or discrepancies. Both are inevitable and must be researched, potentially corrected or explained. Over the years, as we learn of potential weaknesses in our data collection and/or processes, we make adjustments to correct for future years.   This process of back-and-forth between St. Jude and our affirmative action vendor lasts two to three months each year with an effort of 10 to 20 hours per month by St. Jude employees.

Once all additional data issues are resolved, our affirmative action vendor begins to compile the basic numbers and statistics for the AAP. St. Jude then moves its focus to update other areas of the AAP that must be reviewed each year. This includes the narrative, feeder groups and factor weights. All of these are forwarded

to our affirmative action vendor for inclusion into the final AAP.   This takes about 5 to 10 hours to update each year and has remained constant over the last three years. These duties are handled by the manager of employment or me.

St. Jude's most recent AAP, for the dates of October 1, 2010, to September 30, 2011, was more than 450 pages. We also have our affirmative action vendor run the various statistical analyses that would be generated by the OFCCP if we were audited.   This report for the most recent plan year is more than 250 pages. These final reports were sent to us in February. Multiple employees spend significant time reviewing the results and compiling questions and concerns.   Typically, about a month after we have received the AAP, we have a one to two hour conference call with our affirmative action vendor to review our concerns and for our affirmative action vendor to point out issues and areas for improvement based upon the audit experiences of their other clients. The time and effort to review and absorb the affirmative action plans and statistical analysis varies upon the number of initial issues found. For our most recent AAP, I have easily spent 30 hours reviewing our plan and conducting trend analyses. Other St. Jude employees also have spent a great deal of time on this process, and I am not able to assess their efforts at this time.

Continual Improvement

After the conference call has concluded, the St. Jude team has a final AAP, and we have identified areas of concern that warrant further analysis. In our current plan, we have 21 placement goals, more than 15 potential issues around adverse impact and numerous potential compensation issues.   Placement goals are always reviewed with our entire recruitment team.   The placement goals are reviewed over time along with sourcing data to determine if we are headed in the right direction with our efforts or if we need to devise new strategies.

Any statistical indication of potential adverse impact with selection, promotion and termination decisions are reviewed by the employment team. Any statistical indication of potential compensation issues are reviewed by the compensation team. Each group will devise strategies, research the issues, and conduct additional analysis. All of this effort and time varies widely each year dependent upon what findings we have in our plan.

In addition, every year we focus on any new and proposed regulations that may become effective in the future and potential areas of weakness in which our processes and systems can be improved or may need to be modified. Each step can be expensive and time-consuming even for small improvements. For example, in the past two years, we have created new recruitment and retention initiatives relating to U.S. veterans returning from the Iraq and Afghanistan wars. We also had a team research and implement a solution that allows for applicants with disabilities to have new alternative methods (other than using our Career Center website) to apply for open positions. Unfortunately, sometimes the investment does not produce results desired, and we bear the cost of wasted time and expense. For example, we also have attempted to improve our system for collecting data elements relating to the selection process in order to be able to respond fully to OFCCP data requests and to analyze the data. Our current ATS is not designed to provide the data elements we need. Consequently, we paid for and implemented customizations to our ATS about 18 months ago, which we thought would solve this problem. Unfortunately we were off target and are still struggling to find a way to address those issues.   The result is that we must now reconsider the steps and expend additional time and

expense to make an incremental modification in order to be able to respond to OFCCP data requests. All of these efforts require resources, effort and dollars and vary widely from year to year.

Carrying out the processes and producing the affirmative action plan required by OFCCP regulations is an extremely involved undertaking and can be overwhelming. This is my third year of having full responsibility for the AAP. The first year, given the volume of work required to meet regulatory requirements, all I could manage to do was just to absorb some of the data. The second year, the information and how to address the issues started to solidify. In my third year, I finally gained enough understanding of the data elements and statistics to truly begin to manage many aspects of the AAP processes and to be more active and able to interact effectively with our vendor.

Training

Every year, we expect our teams to participate in training relating to OFCCP regulations. Our compensation and employment teams participate in local conferences, seminars, webinars, list serves and other activities to ensure that we are up-to-date in our current knowledge. Many of our current compensation professionals and recruiters were not at St. Jude for our last audit in 2009. Consequently, we are in the process of scheduling our affirmative action vendor to conduct two to three days of training for our team onsite. This will cost $4,000/day plus travel expenses. The need to train new employees on the entire process and keep other employees current in their knowledge is a constant requirement. This will be in addition to an onsite session with our vendor to revise our data collection, analysis and reporting around factor weights, feeder groups and availability percents.

Audits

All of these efforts I have described are solely in preparation for an audit and passing the audit.   Over the course of my employment at St. Jude, we have been audited three times. The last two audits happened in quick succession, in 2007 and 2009. The audit in 2009 started and concluded in that year and lasted about eight months. The length is similar to previous audits. The time and effort expended in 2009 was significant. Each month, our auditor had a number of questions and concerns, which had to be researched and addressed. Before sending any response, St. Jude discussed the questions and our response with our affirmative action vendor and our legal counsel. This back-and-forth process consumed about 20 to 40 hours of effort each month, depending on the number of individuals required to research and compose the response.

In June, we were notified that an onsite visit was required. We were told that there were three job titles that had potential discrimination with respect to compensation and that this was the reason for our audit being elevated from what is referred to as a "desk audit" to a full audit with an onsite visit. Four St. Jude employees spent weeks pulling applications, personnel files, resumes and curriculum vitas to compile additional data that we felt would explain the difference in the pay in these three job titles. Examples of the type of information we collected and entered into a spreadsheet for each employee in these job titles were years of directly related job experience obtained before hire, level of degree, number of degrees, area of specialty, years in job title (not necessarily the same as tenure) and past performance reviews.   This information was sent to our affirmative action vendor who reran the applicable statistical analyses. In all instances the statistical indication of potential discrimination was eliminated by these relevant factors. Two other team members focused their

time on creating a presentation for the auditors to explain the nature of work done at St. Jude and how we were different than the typical sort of institution being audited by the OFCCP.

General Concerns and Conclusion

St. Jude takes seriously our responsibility of guarding against discrimination and when such allegations occur, we are committed to dealing with these in a fair, swift and consistent manner. But the current regulatory framework poses challenges for us to meet the goals and standards set by the OFCCP. If St. Jude is not employing enough minorities and women in a job category, it may appear that we are discriminating; if we devise a strategy to eliminate this discrepancy, but we are too successful in our efforts – essentially meaning now we have hired too many women and minorities - then we may appear to be engaged in reverse discrimination. The standards require that we have the perfect mix of gender and racial groups for every job category. It is an impossible standard to meet, not to mention that the data elements used to conduct the analysis are crude and incomplete. If you only look at race and gender as predictors of hiring, promotions, terminations and pay, then you are actually ensuring that these are the factors that create a statistical variance. The focus of audits, in my professional opinion, become on smaller and smaller bits of data.

The OFCCP's focus on statistical analysis and forcing federal contractors to collect more and more detailed data encourages contractors to focus on data collection data storage, paperwork and legal defense, not on the outreach and employee development that are the essence of affirmative action. The statistical numbers generated in an AAP do not paint a full and accurate picture. The factors that go into making hiring, pay, promotion and termination decisions are numerous and cannot always be quantified, much less collected in a database. Two individuals may have bachelor's degrees—one from a prestigious educational institution and the other from an institution where the only requirement for entrance is to pay the fee and has minimal standards for the individuals teaching the courses. I can potentially capture in a database that both applicants have a degree, but how do I quantify the value or worth of the educational experience represented by each degree? The educational institutions are very different form one another. Yet the OFCCP's analysis treats them equally valuable and may accuse us of discrimination for hiring a graduate of one educational institution over another. The entire list of intangible factors that matter for my institution are many; including number of publications, quality of publications, number of citations, impact on field of study, number of grants, phone interviews, face-to-face interviews, references, quality of references, awards, etc. It is not possible to pull all of this into our analysis for more than 30,000 applicants every year and more than 3,700 employees, as much of this information doesn't even exist in a database. The burden of collecting, maintaining and analyzing this information in the manner that is expected in an OFCCP audit is immense and essentially requires the expense of outside experts. The appropriate focus, and the only one that actually produces the type of results that are supposed to be the OFCCP's goal, is on good faith efforts to improve diversity in the applicant and promotion pools, and creating fair selection processes

And every year the burdens continue to increase as new regulatory requirements must be met. The new proposed regulation relating to affirmative action for persons with disabilities is likely to increase burdens significantly. The proposed target for disability hiring for each job group is 7%. This will require a whole host of additional responsibilities for employers. The OFCCP has estimated that an employer can accomplish all of these new obligations in only 30 minutes each year, but this is grossly underestimated in my opinion.

There are good things that come from the affirmative action process. Employer outreach to under-employed groups, attention to eliminating barriers to the employment of women, minorities, veterans and disabled individuals and encouraging employers to assess their efforts regularly are desirable and can be of real benefit. The real question, though, is whether the OFCCP's methods and new regulations actually promote those good things in an efficient and effective way or simply create excessive burdens and fodder for litigation. As an individual who has worked on OFCCP compliance diligently for a number of years, the process is all "stick" and no "carrot." It does not feel as though St. Jude is rewarded for its good behavior or for making the good faith efforts to combat problems that are larger than the institution.

In conclusion, the efforts, resources and costs to collect the data, create an AAP, do something with the information from the AAP, stay current of new and pending regulations, ensure education for our team and meet other compliance obligations and OFCCP requests create significant burdens and barriers to efficiency and impose a level of expense of time and money that is far in excess of what is necessary to accomplish effective affirmative action.   In other words, our team is not focused on providing a fair and diverse workplace, but instead surviving our next audit. Thank you.