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OFCCP Issues Directive Announcing Ombud Service

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Quick Hit: OFCCP has announced its intention to create an Ombud Service. The new service will create a new position within the OFCCP, the "Ombud," who will serve as a contact for contractors seeking to raise concerns or suggestions about OFCCP.

Key Takeaways:

- The Ombud Service represents another example of OFCCP working to implement initiatives identified in its Town Hall Action Plan. With its flurry of recent Directives, OFCCP is taking steps to show contractors that it is responsive to their concerns.
- The OFCCP's new Directive merely announces the creation of the service in the future. In principle, the idea of an Ombud Service makes sense. It would provide contractors with an avenue to raise concerns and address perceived unfair conduct by compliance officers. However, until we see the details of the program it is difficult to predict how useful it will be.
- One detail that will portend the effectiveness of the new service is how it handles confidentiality. Although the Directive recognizes that contractors are concerned that raising issues with the agency could lead to retribution, the Directive does not contain any statements regarding how the Ombud Service will protect the identities of contractors raising concerns. Whether and to what extent OFCCP can provide contractors such assurances will be a key element of the program and perhaps the key determinant of its success.

More Detail: On September 19, 2018, OFCCP issued Directive 2018-09 (the "Directive"), which announces the "planned implementation of an Ombud Service in the national office to facilitate the fair and equitable resolution of specific types of concerns raised by OFCCP external stakeholders in coordination with regional and district offices."

As explained in the Directive, OFCCP is creating the Ombud Service in response to recommendations made by the Government Accountability Office's ("GAO") September 2016 *Equal Employment Opportunity: Strengthening Oversight Could Improve Federal Contract Nondiscrimination Compliance* report, as well as contractor feedback received at Town Hall meetings held by OFCCP in 2017. The new service appears aimed at addressing the concern reported by the GAO that "[s]takeholders and contractors fear that asking OFCCP for assistance would call attention to them and possibly make them a target for future OFCCP enforcement actions, such as compliance evaluations." It also aims to respond to concerns that the agency "does not have an independent mechanism through which external stakeholders, after having exhausted district and regional office channels, can share their concerns with OFCCP about a particular open matter or provide general feedback and recommendations to improve the administration of the agency."

The Directive does not create the Ombud Service; rather it simply announces that OFCCP plans to implement such a service. The Ombud Service's mission will be "to facilitate the fair and equitable resolution of concerns raised by OFCCP's external stakeholders, conduct independent and impartial inquiries into issues related to the administration of the OFCCP program, and propose internal recommendations to continuously improve the quality of services OFCCP provides to its stakeholders."

The Directive provides contractors with some details about what to expect from the new service. Per the Directive, the Ombud Service "should require the Ombud to:

- Listen to external stakeholder concerns about OFCCP matters and suggestions for improvements;
- Promote and facilitate resolution of OFCCP matters at the district and region office level;
- Work with OFCCP district and regional offices as a liaison to resolve certain issues after stakeholders have exhausted district and regional office channels;
- Refer stakeholders to the OFCCP Help Desk for routine compliance and technical assistance inquiries;
- Accept and review matters referred directly by the national office; and
- Have the discretion to reject a referral in appropriate circumstances."

The Directive also makes clear that the Ombud Service "will not

- Advocate for either side of a dispute;
- Give legal advice, analysis, opinions, or conclusions;
- Conduct compliance evaluations, complaint investigations or participate in conciliation agreement negotiations; and
- Have any role in conduct or discipline issues regarding OFCCP staff."

When more details about the Ombud Service are announced we will report them here.

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