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# OFCCP Proposes New FAAP Directive

**Government Contractor Compliance & Regulatory Update Blog** on **October 5, 2018**

The Office of Federal Contractor Compliance Programs ("OFCCP") is seeking approval to change its Functional Affirmative Action Program ("FAAP") requirements. The proposed directive, for which comments are due by November 13, 2018, proposes sweeping changes to the current FAAP directive, with the stated aim of encouraging contractors to use FAAPs.By way of background, federal contractors typically must prepare affirmative action programs for each of their establishments. However, contractors can, with OFCCP approval, prepare affirmative action programs that are based on their functional or business units, as opposed to physical location. A functional or business unit is a "component within an organization that operates autonomously in the ordinary course of the organization's business." Historically, the process of applying and being approved to create a FAAP has been very time-consuming and burdensome for contractors, and OFCCP has been viewed as less than welcoming of these arrangements.

OFCCP appears to have changed its view of FAAPs. Its proposed directive states that:

OFCCP is encouraging the use of functional or business unit based affirmative action programs ([F]AAPs). A functional AAP agreement can be an attractive alternative to having an establishment-based AAP for several reasons. OFCCP's FAAP program allows a company that is a covered federal contractor or subcontractor to organize its AAP to reflect how the company operates functionally and not where its facilities and people are physically located. A company with a FAAP may find that it is easier to organize and analyze data, identify issues, establish clear lines of responsibility for implementing its AAP, and monitor progress. There is also the benefit of having the flexibility to combine the use of FAAPs and establishment-based AAPs.

According to the OFCCP's Supporting Statement, the proposed directive would modify the current FAAP directive in several material respects, including:

- Extending the time at which a contractor with a FAAP must certify that no changes have been made to functional units, business structure or other factors affecting

the FAAP from every three years to every five years;

- Eliminating the requirement that FAAP contractors undergo at least one compliance evaluation during the term of their FAAP agreements;
- Expanding the exemption period from further compliance evaluations for FAAP units that have undergone a compliance evaluation from 24 months to 36 months from the date OFCCP closed the previous evaluation;
- Eliminating consideration of a contractor's equal employment EEO compliance history when deciding whether to approve a FAAP request;
- Removing the three-year waiting period for reapplying for a FAAP following termination of a FAAP agreement; and
- Eliminating the annual requirement for contractors to modify their FAAP agreements.

These changes, if implemented, will lessen the burden on contractors interested in entering FAAP agreements, but also will lessen the administrative burden on the OFCCP, hopefully speeding up the process by which contractors can enter FAAP agreements.

Comments can be submitted electronically or in paper format as follows:

- *Electronic comments:* The federal eRulemaking portal at *www.regulations.gov*. Follow the instructions found on that website for submitting comments.
- *Mail, Hand Delivery, Courier:* Addressed to Debra A. Carr, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C-3325, Washington, DC 20210.

We will continue to monitor updates regarding this directive.

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- **Guy Brenner**
  Partner