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OFCCP Proposes Changes to Audit Scheduling Letters

Government Contractor Compliance & Regulatory Update on **April 17, 2019**

Quick Hit: OFCCP recently issued a request to the Office of Management and Budget ("OMB") seeking approval of changes to its "scheduling letter, compliance check letter, [] Section 503 focused review letter… [and] approval for a new VEVRAA focused review letter." OFCCP states the revised letters will "provide OFCCP an efficient option to monitor contractor compliance by reaching a greater number of contractors with existing resources with a smaller contractor burden imposed during each check." Each of the proposed compliance letters are available for review here. The public has until June 11, 2019 to submit comments about the proposed changes.

Key Takeaways:

If approved, the new letters will require contractors to submit significant additional information in response to an audit. Notably, the proposed letters do not extend the deadlines for responding to these information requests. These letters reflect a troubling trend emanating from the OFCCP. After an initial "honeymoon" phase, where the agency took steps aimed at improving relations with the contractor community following a rocky period during the Obama Administration, it appears the agency is ratcheting up its focus on enforcement and the burdens its enforcement activities impose on contractors.

For example, if approved, the establishment compliance evaluation scheduling letter will require contractors to provide additional information not included in the current version of the letter. Key among these are: (1) a list of their three largest subcontractors based on contract value; (2) job group analyses that account for specific racial groups (as opposed to simply identifying and grouping together "minorities"); (3) more detailed information about promotions, specifically the pool of candidates from which promotions were selected; and (4) "[r]esults of the most recent analysis of the" contractor's "compensation system(s)." OFCCP is also bringing back "compliance checks" – limited reviews aimed at quickly determining if the selected contractor is meeting basic compliance requirements. The letter proposed for these evaluations seeks contractors' EO 11246, Section 503, and VEVRAA Affirmative Action Programs, as well as detailed information concerning reasonable accommodations (i.e., the requests made and whether they were granted or denied), and examples of job advertisements.

Finally, OFCCP has proposed to revise its Section 503 focus review letter, and seeks approval for a VEVRAA focus review letter. Both proposals seek information far beyond what OFCCP proposed when it first announced focused reviews. Most notably, contractors would have to submit employee-level compensation data that is currently required for regular compliance evaluations, and detailed applicant and employee level information for veterans and individuals with disabilities.

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