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OFCCP Revises Proposed Audit Scheduling Letters

Government Contractor Compliance & Regulatory Update on **July 26, 2019**

Quick Hit: On June 28, 2019 The Office of Management and Budget ("OMB") published notice that "OFCCP seeks to revise the letters used to schedule compliance evaluations." As we previously reported, OFCCP proposed changes to its audit scheduling letters in April 2019 and accepted public comments through June 11, 2019. In light of the comments it received, OFCCP has revised its proposed letters and reduced some of the new requirements included in its April 2019 proposal.

Key Takeaway: Although OFCCP has revised some of the changes it proposed to the audit scheduling letters in April 2019, the revised scheduling letters still contain additional reporting burdens for contractors. The new proposed letters still need to be approved by OMB before they are implemented.

Below are some of the proposed changes that have been removed by the latest revisions, and some of the proposed changes that remain.

Proposed changes that have been removed:

- **Sub-minority data**: OFCCP's latest revisions remove requests for sub-minority data including: (i) sub-minority goal calculations; (ii) sub-minority utilization and availability; and (iii) sub-minority placement by group.
- **Analysis of the contractor's compensation systems:** The latest revisions dispense with the proposed requirement for contractors to submit the results of their most recent compensation system analysis.
- **Candidates in the promotion pool**: OFCCP is no longer seeking data concerning the pool of candidates from which promotions were selected. Instead, OFCCP's latest revisions seek the percentage of minority and female employees in the job group from which employees were promoted.
- **Termination data**. The latest revisions delete OFCCP's request for data distinguishing between voluntary and involuntary terminations.
- **Data on AAP plans beyond six months**: OFCCP has removed its request for additional data on AAP plans when a contractor receives an audit letter more than

six months into an AAP plan year. The April proposed changes would have required contractors to submit data for every completed month of an AAP plan year if a scheduling letter was received more than six months into the year. The latest revisions only require a contractor to submit data on the first six months of the AAP plan when a compliance evaluation scheduling letter is received later than six months into the AAP plan year – consistent with the current requirement.

- **Required electronic submission**: OFCCP has removed its April proposal requiring contractors submit responses to a compliance check letter in electronic format. Contractors are now expected to either make the materials available for onsite review or, alternatively, submit the requested materials to OFCCP within 30 days of receiving a Compliance Check scheduling letter.

Proposed changes that remain:

- **Job posting**: Contractors are still required to provide examples of job advertisements in response to a Compliance Check scheduling letter.
- **Subcontractor information**: OFCCP's latest revisions still require contractors to submit information concerning certain subcontractors.
- **EEO-1 reporting**: The latest revisions require contractors to submit copies, for the last three years, of Component 1 of their EEO-1 reports. It appears that OFCCP will not require submission of Component 2 reports.
- **Audit and reporting system compliance documentation**: OFCCP reinserted the requirement that contractors submit documentation of their actions to comply with audit and reporting systems, which was removed in the changes proposed in April 2019.

The deadline to submit comments to OMB concerning the new proposed letters is July 29, 2019. We will continue to monitor this developing story and provide updates as warranted.

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