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Meet OFCCP's New Scheduling Letters, Same As The Old Scheduling Letters?

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As faithful readers of this blog know, OFCCP proposed significant changes to its audit scheduling letters in April 2019, and then scaled back those changes in June 2019 revisions. Now, close to a year after OFCCP commenced the process, the Office of Management and Budget ("OMB") has approved revised scheduling letters – specifically, scheduling letters for compliance evaluations, compliance checks, and Section 503 and VEVRAA focused reviews.

But, what changes did OMB ultimately approve and what do those changes mean for contractors? It turns out OMB approved very few changes to the scheduling letters. In fact, the most notable feature of the new scheduling letters are the provisions OMB *rejected*.

The New Compliance Evaluation Scheduling Letter

- Other than typographical changes, the changes in the new compliance evaluation scheduling letter are quite minimal. The two changes of practical consequence pertain to self-assessment processes, whereby the OFCCP will no longer require contractors to submit the specific dates on which they conducted such reviews.
    - **Assessment of Personnel Processes:** The requirement that contractors submit the ***date*** of their most recent and next scheduled assessment of personnel processes required under OFCCP's Section 503 and VEVRAA regulations has been eliminated and, instead, contractors must provide a "***description of the review***."
    - **Assessment of Physical and Mental Qualifications**: The requirement that contractors provide the ***date*** of their most recent and next scheduled assessment of physical and mental job qualification standards has been eliminated. Instead, the new letter requires that contractors provide "***the schedule of the assessment***."

- ***So What New Provisions Did OMB Reject?*** Among the provisions OFCCP proposed in June 2019 that are not included in the new scheduling letter are the following:
    - **Subcontractor Names**: The approved compliance evaluation scheduling letter does not contain the proposed requirement that contractors provide a "list of the subcontractor names and locations for the three most recently awarded subcontracts that have a total contract value of $150,000 or more, excluding those expiring within six months of the receipt of this letter."
    - **Internal Promotions**: The approved compliance evaluation scheduling letter does not contain the proposed requirement that contractors provide, with regard to promotions, the "workforce representation of women and minorities in the job group from which the person(s) was promoted."

The New Section 503 Focused Review Scheduling Letter

- **Current AAP Year Utilization Analysis**: In addition to providing "[t]he utilization analysis evaluating the representation of individuals with disabilities" in their prior AAP year, contractors are required to provide current year results if they receive the scheduling letter more than six months into their current AAP year.
- **Formation of Job Groups No Longer Required for Focused Reviews**: The new Section 503 focused review scheduling letter does not require that contractors submit job group formation information. The former version of the focused review scheduling letter required that contractors submit "formation of job groups (covering all jobs) consistent with criteria given in 41 CFR § 60-2.12." Although contractors are still required to submit their EO 11246 affirmative action program ("AAP") during a focused review, the new letter makes clear "OFCCP will not conduct a review of the Executive Order 11246 AAP during a Section 503 focused review. This AAP will only be used to help OFCCP understand the contractor's organizational structure, confirm Section 503 job groups, and understand generally how the Section 503 compliance strategies fit with the contractor's other affirmative action efforts. OFCCP will not analyze data contained in the Executive Order 11246 AAP to look for discrimination based on sex or race and ethnicity."
- **Documentation of Compliance With Audit And Reporting Systems No Longer Required**: Under the former version of the letter, contractors were required to submit "[d]ocumentation of all actions taken to comply with the audit and reporting system requirements described in 41 CFR § 60-741.44(h)." That requirement is removed from the new scheduling letter.

- **EEO-1 Reports No Longer Required**: The new Section 503 focused review scheduling letter removes the requirement that contractors submit EEO-1 reportsas part of the focused review process.
- **Assessment of Personnel Processes and Physical and Mental Qualifications**: The new Section 503 focused review scheduling letter integrates the same changes to the assessment of personnel processes and physical and mental qualifications requirements as included in the new compliance evaluation scheduling letter, discussed above.
- ***So What New Provisions Did OMB Reject?*** Among the provisions OFCCP proposed in June 2019 that are not included in the new scheduling letter are the following:
  - **Employment Activity Data**: The approved focused review scheduling letters do not contain the proposed requirement that contractors provide applicant and employee-level employment data for all applicants and employees covering the immediately preceding AAP year.
  - **Compensation Data**: The approved focused review scheduling letters do not contain the proposed requirement that contractors provide compensation data as required in the compliance evaluation scheduling letter.

The First VEVRAA Focused Review Scheduling Letter Is Now Approved

OMB approved a VEVRAA focused review scheduling letter, which is the first such scheduling letter approved by OMB. The letter, while tailored to VEVRAA rather than Section 503, is nearly identical to the new Section 503 focused review scheduling letter. With this letter now approved, the agency can now begin scheduling VEVRAA Focused Reviews. In November 2019, OFCCP identified 500 contractors selected for such reviews.

Compliance Check Scheduling Letter Largely Unchanged

- The newly approved compliance check letter is essentially unchanged from the prior version. Notably, the approved compliance check scheduling letter does not contain the proposed provision requiring contractors submit written AAPs prepared in accordance with EO 11246, Section 503, and VEVRAA. Rather, the letter maintains the preexisting requirement that contractors provide AAP “results” for the preceding year.

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