

OFCCP Issues Certainty Directive

Government Contractor Compliance & Regulatory Update Blog on **December 16, 2020**

Quick Hit: On December 15, 2020, OFCCP [announced](#) the release of [Directive 2021-02, Certainty in OFCCP Policies and Practices](#) (the “Directive”). The Directive generally “reaffirms” a number of certainty initiatives previously announced in agency publications, such as timely and efficient progress of compliance evaluations, professional conduct by OFCCP staff, and neutral scheduling of compliance evaluations. The only additional commitments made by the agency in the Directive are to conduct ongoing reviews of its policies and practices to ensure they are clear and certain to the stakeholder community, and to provide a process by which contractors can seek clarification or disclosure of a policy or practice to ensure greater certainty.

More Detail: In 2018, OFCCP adopted the principles of Certainty, Efficiency, Recognition, and Transparency (the “CERT Principles”). OFCCP subsequently issued three directives related to the CERT Principles – [Directive 2018-03, Transparency in OFCCP Compliance Activities](#), [Directive 2018-06, Contractor Recognition Program](#), and [Directive 2020-02, Efficiency in Compliance Evaluations](#). The Directive is the final directive related to the four CERT Principles. Its stated purpose is “[t]o reaffirm OFCCP’s commitment to a number of certainty initiatives and principles, and establish a process to facilitate the continued provision of clarity and certainty in OFCCP policies and practices.”

The Directive incorporates and attaches guidance the agency previously published entitled “[What Federal Contractors Can Expect](#)” (referred to as the “Contractors Bill of Rights”). In that document, OFCCP set forth the following eight commitments:

1. Access to Accurate Compliance Assistance Materials
2. Timely Responses to Compliance Assistance Questions
3. Opportunities to Provide Meaningful Feedback and Collaborate
4. Professional Conduct by OFCCP’s Compliance Staff
5. Neutral Scheduling of Compliance Evaluations

6. Reasonable Opportunity to Discuss Compliance Evaluation Concerns
7. Timely and Efficient Progress of Compliance Evaluations
8. Confidentiality

Accordingly, the Directive does little more than repackage prior commitments in a more formal way. The Directive, does however, break some new ground, providing that “the agency is now adding a commitment to conduct ongoing reviews of its policies and practices to ensure they are clear and certain to the stakeholder community, and to provide for a process by which a member of the stakeholder community can seek clarification or disclosure of a policy or practice to ensure greater certainty.”

The Directive also highlights the following agency actions as evidence of its focus on increasing certainty:

- The establishment of the Contractor Assistance Portal, the Opinion Letter Program, and the [Contractor Compliance Institute](#);
- The publication of the Technical Assistance Guide and a comprehensive update to the [Federal Contract Compliance Manual](#);

The promulgation of the agency’s [final rule](#) on *Nondiscrimination Obligations of Federal Contractors and Subcontractors: Procedures to Resolve Potential Employment Discrimination*.

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