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OFCCP Launches Contractor Portal Initiating AAP Verification Program

Government Contractor Compliance & Regulatory Update Blog on **December 2, 2021**

On December 2, 2021, OFCCP announced the launch of its new "Contractor Portal," which "[c]overed federal contractors and subcontractors ("contractors") must use … to certify, on an annual basis, whether they have developed and maintained an affirmative action program for each establishment and/or functional unit, as applicable." The Contractor Portal will also serve as a "secure portal for scheduled contractors to submit to OFCCP their Affirmative Action Program(s) during compliance evaluations." This development has been years in the making, initiated by a 2016 GAO report criticizing OFCCP for having no process for ensuring contractors were preparing their affirmative action programs ("AAPs") annually, and comes over three years after former Director Craig Leen announced OFCCP's intention to create an AAP verification program.

The announcement sets forth key dates for registration and AAP certification:

On **Feb. 1, 2022**, contractors may begin registering for access to the portal. OFCCP will also send an e-mail to each covered federal contractor in its jurisdiction whose email information is available in its system inviting them to register.

On **March 31, 2022**, contractors will be able to utilize the certification feature in the portal to certify their AAP compliance.

By **June 30, 2022**, existing contractors must certify whether they have developed and maintained an affirmative action program for each establishment and/or functional unit, as applicable.

Contractors can access the portal here. OFCCP has also created a FAQ page regarding the portal. There, OFCCP explains:

- Supply and service contractors who meet the thresholds for having AAPs will be required to use the portal: "Specifically, contractors that hold a contract of $50,000 or more and employ 50 or more employees must develop and maintain AAPs pursuant to Executive Order 11246 and Section 503 of the Rehabilitation Act of

1973. If a contractor has at least 50 employees and a contract of $150,000 or more, then it must also develop an AAP pursuant to the Vietnam Era Veterans' Readjustment Assistance Act of 1974."

- At this time, construction contractors who are not also supply and service contractors are *not* required to use the portal or certify AAP compliance.
- Certifying AAP compliance will *not* exempt contractors from OFCCP compliance evaluations.

OFCCP promises more information will come out in the coming months. Among questions we have are: (a) what will contractors actually be required to certify with regard to their AAPs?; (b) will failure to certify increase the likelihood of being selected for a compliance evaluation?; and (c) which AAP years will be subject to the June 30, 2022 deadline, and how will OFCCP address contractors who have non-calendar AAP years?

Contractors who have been less than diligent with their AAP preparation should begin now to ensure they have compliant AAPs as soon as possible.

We will continue to monitor and report on this significant development.

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- **Guy Brenner**
  Partner