

## OFCCP Reveals Development of Voluntary Enterprise-Wide Review Program

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**Quick Hit:** OFCCP's [Directive 2019-04](#) reveals the development a Voluntary Enterprise-Wide Review Program ("VERP"). Once established, contractors will be able to voluntarily participate in the program, submitting themselves to an expanded compliance evaluation as part of an application process and, upon admittance to the program, will be removed from the pool of contractors in the evaluation scheduling process for either 3 or 5 years. According to the OFCCP, VERP's purpose is to "focus on recognizing contractors that have comprehensive, corporate-wide inclusion and compliance programs" and "facilitate... compliance by high performing contractors and those who wish to reach the top".

**Key Takeaways:** The Directive continues the recent trend of OFCCP initiatives expanding the reach of its compliance programs and working to maximize its enforcement efficiency. Much like the Early Resolutions Procedures Directive, which we reported on [here](#), the VERP directive seeks to "help[] OFCCP be more effective in achieving its mission to protect workers, promote diversity, and enforce the law."

The carrot that VERP offers to contractors—avoiding the uncertainty of the evaluation scheduling process for either 3 or 5 years—is most likely to entice contractors who are already putting in the work to meet their compliance obligations. Unlike a typical compliance evaluation which only examines a single establishment, the VERP application process evaluation examines both a contractor's headquarters and a sample of their other establishments. Contractors accepted into VERP must provide periodic reports, verifying their maintenance of a discrimination free and inclusive workforce, for the duration of their participation in the program.

While VERP contends that it will offer "meaningful cost-saving compliance incentives to federal contractor participants", the true motivation behind the program appears to be the financial and enforcement benefits OFCCP will enjoy from the program. By eliminating contractors that are meeting their compliance obligations from the evaluation scheduling process, the remaining pool of contractors becomes more concentrated with contractors who are likely not meeting their compliance obligations. A 2016 Government Accountability Office report found that only 2% of OFCCP compliance evaluations result in findings of discrimination. As such, OFCCP has recently been looking for ways to use its budget dollars more effectively. By weeding out compliant contractors, OFCCP, is more likely spend its evaluation resources on contractors in violation of OFCCP regulations.

Like most recent OFCCP Directives, the VERP Directive makes sense for OFCCP. But does it make sense for contractors? At this point, it is difficult to say as the Directive merely announces the development of the program – details will follow. As such, at this point we do not know what requirements VERP will impose on contractors during the application process, the evaluation process, or in the agreement contractors enter into as part of their removal from the evaluation scheduling process. The Directive does not specify the quantitative or qualitative aspects of participating contractor's self-reporting obligations. Nor does the Directive explain what criteria a contractor must meet for admittance to VERP. Details such as these are crucial to the cost benefit analysis of contractor participation in VERP.

**More Detail:** On February 13, 2019 OFCCP issued [Directive 2019-04](#) which presents the framework for VERP.



Article By [Proskauer Rose LLP](#)  
[Guy Brenner](#)  
[Government Contractor Compliance & Regulatory Update Blog](#)  
[Government Contracts, Maritime & Military Law](#)  
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VERP “enables OFCCP to blend its compliance evaluation and compliance assistance activities to work with high-performing contractors toward a mutual goal of sustained, enterprise-wide (corporate-wide) compliance, outside of OFCCP’s neutral establishment-based scheduling process.”

The VERP Directive envisions two tiers of contractor participation. The top tier will consist of top performing contractors who have implemented “corporate wide model diversity and inclusion programs.” Admittance to the top tier requires meeting a set of (yet to be established) “more stringent” criteria. Non-top tier contractors are those that are compliant with OFCCP requirements, but wish to receive “individualized compliance assistance to become top performers.”

The application process will require, at least, that contractors undergo an expanded compliance evaluation of both their headquarters and a subset of their other establishments. Contractors must demonstrate that they meet OFCCP’s basic compliance requirements and demonstrate application of, and commitment to, corporate-wide equal employment opportunity programs.

OFCCP will enter into an agreement with every successful applicant that removes that contractor from the compliance evaluation scheduling process for the duration of the contractor’s participation in the program. Top tier contractors may remain in the program for five years, with the ability to remain in the program after re-evaluation, while non-top tier contractors can remain in the program for three years. The exemption from compliance evaluations will not, however, deprive OFCCP of the right to conduct investigations into complaints submitted by individual or third party complainants. To remain in the program, contractors will have to submit “period reports and information” to OFCCP to confirm that they “maintain a workforce free of discrimination or other material violations.” Exactly what these reports will require and how often they will have to be submitted is not detailed in the Directive.

Addressing what is likely to be a concern among contractors, the Directive states that OFCCP will not automatically place contractor applicants rejected from VERP on a compliance evaluation scheduling list. Rather, rejected applicants will simply return to the compliance evaluation scheduling pool where they may or may not be selected for evaluation.

The VERP directive notes, however, that the agreement between OFCCP and participating contractors is conditional on the contractor abiding by all of the agreement’s terms. Contractors failing to maintain VERP’s requirements may have their agreements terminated and be returned to the compliance evaluation scheduling pool.

We will continue to advise our readers of developments on this initiative as more details are made available.

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