

# THE NATIONAL LAW REVIEW

## Details about OFCCP Proposed Focused Review Scheduling Letters

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As we reported [last week](#), OFCCP published in the [Federal Register](#) for Notice and Comment revised scheduling letters for Section 503 and VEVRAA Focused Reviews, Compliance Checks, and regular establishment compliance reviews. As a reminder, scheduling letters initiate a compliance review and set forth the required items contractors must provide to OFCCP in an audit. Over the next several days, we will post additional blogs about the proposed scheduling letters and the key changes that may affect contractors undergoing audits.

This discussion dives into the Section 503 and VEVRAA Focused Review scheduling letters (Focused Review Letters). Mirroring Section 503 and VEVRAA's regulations, these proposed scheduling letters are nearly identical. The primary difference is that the Section 503 letter would require contractors submit their disability utilization analysis, while the VEVRAA letter would require contractors submit their veteran hiring benchmark. OFCCP has not yet started scheduling contractors for [VEVRAA Focused Reviews](#) but has plans to do so starting next Fiscal Year.

Just months ago, the Agency received approval for a [Section 503 Focused Review Scheduling Letter](#). Despite its recent approval and release, OFCCP is already proposing significant updates. We discuss those differences below.

- **New - Applicant and Employee Level Employment Activity Data (Items 8 and 11):** The Focused Review Letters require *individual level* applicant, hiring, promotion, and termination data that include veteran and disability personnel activity data by job title and job group. This is far more detailed data than the OFCCP currently receives at the outset of any audit and would allow the Agency to conduct hiring, promotion, and termination adverse impact analyses for veterans and individuals with disabilities. If this is approved, proactive disability and veteran adverse impact analyses may be essential in each audit submission. Further, the Letters require employers submit a single unique identifier to permit OFCCP to track an applicant and/or employee across all reports. This may seem small, but it could present a significant burden since most contractors use separate applicant tracking and HRIS which likely assign different applicant and employee identification numbers.
- **New - Employee Level Compensation Data (Items 8 and 12):** As with the establishment review compensation requirements, the Focused Review Letters request employee level compensation for all employees, including base salary/wage rate, hours worked in a typical week, and other types of compensation, such as bonus, incentive, commission, merit increase, locality pay, and overtime. This request would align with the employee level compensation data submission in an EO 11246 AAP, which has led to protracted, aggressive evaluations of employer compensation. With this similar request, we can be sure the Agency plans to analyze disability and veteran compensation. This raises an interesting question given an individual's choice to self-identify is completely voluntary and employers are not permitted to require individuals to respond to the survey - resulting in data that is likely not an accurate representation of an employers' disability or veteran population.
- **New - Executive Order (EO) 11246 AAP (Item 1):** The proposed Focused Review Letters require contractors submit the current EO 11246 (race and gender) AAP for the selected establishment. OFCCP explains however, that despite collecting the AAPs, it will not review the EO 11246 AAP during a focused review and will not analyze its data "to look for discrimination based on sex or race and ethnicity." Instead,

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OFCCP will only use the AAP to better “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.” It is currently unclear what must be submitted under this proposed requirement. We hope the additional insights will be learned following the notice and comment period.

- **New - 6 Months or More Into AAP Year (Items 4 and 11):** If approved, the Focused Review Letters would require contractors to submit more than the current 6 months of additional personnel activity data if the scheduling letter arrives more than 6 months into an AAP plan year, as currently required. Instead, contractors would need to submit personnel activity and applicant data for every completed month of the current AAP year.
- **Removed - EEO-1 Reports:** Absent from the proposed scheduling letter is a request for copies of 3 years of EEO-1 reports. Since EEO-1 reports do not include disability information, EEO-1 reports would not assist OFCCP with its review of contractors’ Section 503 compliance, thus this deletion makes sense.

We encourage you to review the new scheduling letters and, if you would like to, [provide comments](#) to the Office of Management and Budget about the burdens that these proposals impose. Comments are due June 11<sup>th</sup>.

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