OFCCP Proposes Revised Scheduling Letter for Compliance Checks

Friday, April 19, 2019

This is the second in our series of blogs on OFCCP’s proposed changes to its various scheduling letters.

Our previous publication focused on the Agency’s new Section 503 and VEVRAA Focused Reviews. In addition to rolling out the new Focused Reviews, OFCCP has also revived the Compliance Check, which has not been used in recent years. There were 500 Compliance Checks on OFCCP’s recent CSAL list, published in March. Intended to evaluate whether contractors have maintained records consistent with their regulatory obligations, Compliance Checks are expected to be the least invasive of the OFCCP reviews and are “more limited in scope than a compliance review.”

Nevertheless, just as contractors began to acquaint themselves with the requirements under the Compliance Check scheduling letter, OFCCP has proposed a new version of the letter.

Though the existing and proposed letters are quite similar, the proposed letter contains small, but meaningful, changes that contractors should not overlook.

- **Item 1:** While the existing letter requests “AAP results for the preceding year,” the new letter asks for “[w]ritten AAPs” prepared in accordance with EO 11246, Section 503, and VEVRAA. In both versions, the regulatory cites refer to contractors’ record-keeping obligations, and a narrow reading suggests that contractors may not be required to submit quantitative analysis. However, the spirit of the request may be broader. OFCCP’s expansion of the request in the proposed scheduling letter to include “the written AAP,” rather than “results of the preceding year” seemingly provides additional insight into what OFCCP may be expecting with this item. However, since OFCCP has not used Compliance Checks in the past several years, what the current Agency expects – both under the existing and proposed scheduling letters – remains to be seen.

- **Item 3:** Importantly, if the proposed letter is approved, OFCCP will require contractors to submit “[r]equests made for accommodations for persons with disabilities, whether the requests were denied or granted.” This differs from the language in the existing letter, which simply asks for examples of accommodations provided. Given the Agency’s heightened interest in Section 503, the expansion of this request comes as no surprise.

The second item, which requests examples of job advertisements, including listings with state employment services, remains unchanged, as is the option to either send the requested information to OFCCP or make it available on-site for OFCCP to review.

OFCCP is reporting it estimates it will take contractors

"approximately 2 hours to retrieve and supply the requested information"

in the revised compliance check letter.

Again, we encourage you to review this scheduling letter and, if you would like to, provide comments by June 11th.
Stay tuned for our next blog in this series which will discuss proposed changes to the establishment review scheduling letter.