

Incoming! Issuance of 1,000 Notifications Portends Ramp-Up of OFCCP Enforcement Activity

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On February 1, the Office of Federal Contract Compliance Programs (OFCCP) issued [1,000 corporate scheduling announcement letters \(CSALs\)](#) to federal contractors, a move that suggests a renewed emphasis on the agency's enforcement of anti-discrimination and affirmative action employment laws. CSALs are informal notices that precede the official initiation of an OFCCP compliance evaluation, but the issuance of these letters serves as both a sign of OFCCP's enforcement posture under the Trump administration and a call to action for the contractor establishments that receive these notifications.

OFCCP's Use of CSALs

CSALs are "courtesy notifications" advising a contractor establishment that it has been selected to undergo a compliance evaluation during the upcoming scheduling cycle. Although they are neither required by law nor a formal part of OFCCP's compliance audit process, they nonetheless warrant close attention, as they essentially function as an early warning system that an OFCCP audit is incoming.

Typically, CSALs are closely followed by a so-called "thirty-day letter," which formally initiates an OFCCP compliance evaluation and requires contractors to submit their written Affirmative Action Program for OFCCP review. Consequently, and as discussed further below, contractors in receipt of a CSAL would be wise to

take steps as soon as possible to ensure that they are fully prepared for OFCCP scrutiny.

Renewed Emphasis on Enforcement (With Limitations)

This latest round of CSAL notifications is notable for several reasons. Most notably, it comes at a time when there have been substantial questions about the direction and priorities of OFCCP's enforcement efforts. The OFCCP was without a Director for over a year following the election of President Trump, and relatively few compliance evaluations were initiated in 2017. Indeed, there were some indications that the Trump administration was considering a proposal to eliminate the OFCCP altogether and merge its functions into the EEOC. But with the confirmation of a new Director of OFCCP in December 2017 and now the issuance of 1,000 CSALs, OFCCP appears poised to reassert itself in the enforcement landscape. Consequently, after a period of relative quiet, contractors should expect—and be prepared for—an uptick in OFCCP's activities.

Yet these indications of increased enforcement activity are accompanied by hints that OFCCP may not wield its authority as aggressively as it has under previous administrations. For instance, in a "CSAL FAQ" document posted online, the OFCCP indicated that it would not issue CSAL notices to more than 10 establishments of a single contractor or to any establishment that had a compliance review closed within the past five years. These limitations are self-imposed—neither is required by law or regulation—and represent a material change from prior OFCCP policy. OFCCP policy was to review no more than 25 establishments of a single contractor under George W. Bush, and it had no formal limit under President Obama. Additionally, OFCCP has long adhered to a two-year "grace period" following the closure of a compliance audit; the new five-year policy is a substantially broader safe-harbor.

Preparing for Audit

Although the nature and scope of OFCCP's enforcement priorities will be closely watched in the coming months and years, the 1,000 contractor establishments that received CSAL notifications this week face a more immediate concern. With the OFCCP set to begin issuing formal Scheduling Letters on March 19, recipients of CSALs should immediately consider taking steps to prepare themselves for an audit. Among other things, contractors in receipt of a CSAL would be wise to focus on self-audit efforts to assess and, if necessary, address any potential issues that could emerge during a compliance review. Given recent trends in OFCCP enforcement, these efforts should include both an analysis of existing affirmative action plans and a detailed review of hiring and compensation data.

Once a CSAL arrives in the mail, contractors are unlikely to avoid OFCCP scrutiny. But by undertaking these self-audit activities proactively and strategically, contractors can better position themselves to address the questions that inevitably will arise during the course of a compliance review.

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