



## Legal Alert: OFCCP Issues Verification Procedures under Executive Order 13496

6/21/2010

On June 15, 2010, OFCCP Director Patricia A. Shiu issued an enforcement directive pertaining to Executive Order 13496. The Executive Order becomes effective on June 21, 2010. For the text of the enforcement directive, you can click [here](#), or go to the OFCCP web site at: <http://www.dol.gov/ofccp/regs/compliance/directives/dir290.pdf>.

The enforcement directive makes clear that OFCCP will share responsibility with the Office of Labor-Management Standards (OLMS), the primary enforcement agency, for ensuring that covered contractors and subcontractors comply with Executive Order 13496. OFCCP's role will be to physically inspect contractors' and subcontractors' establishments where employees covered by the National Labor Relations Act (NLRA) engage in activities relating to the performance of the contract or subcontract, including plants, offices, and work sites. OFCCP is responsible for examining government contracts and subcontracts to ensure compliance with the Executive Order's posting and contract clause requirements. OFCCP is also charged with investigating a contractor's or subcontractor's compliance with EO 13496 if a complaint is filed with the OFCCP that a covered contractor or subcontractor is not in compliance with the Executive Order.

The enforcement directive states that the verification process will be made a part of the onsite phase of compliance reviews that OFCCP conducts under Executive Order 11246, Section 503 of the Rehabilitation Act, or the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA).

Prior to an onsite review, the OFCCP will request that the contractor or subcontractor provide for inspection a minimum of the last three contracts, subcontracts, or purchase orders resulting from solicitations that took place on or after June 21, 2010. Review of a greater number of contracts and purchase orders, however, may be necessary to ensure compliance. During an onsite investigation, the OFCCP compliance officer will physically inspect a contractor's facility to determine whether the notices are posted in conspicuous places so that the notice is prominent and readily seen by employees. Additionally, during the onsite investigation, the compliance officer will inspect the identified sample of contracts or purchase orders to determine whether they include the required contract clause. If a contractor customarily posts employee notices about terms and conditions of employment in an electronic format, the compliance officer will also view the electronic posting, and ensure that the contractor's website states, "Important Notice About Employee Rights To Organize And Bargain

Collectively With Their Employers," and that there is a link to the OLMS's website on the contractor's website. If a significant portion of a contractor's workforce is not proficient in English, the OFCCP compliance officer will check to ensure that the poster is provided in the appropriate language. If a contractor is found to be non-compliant during the onsite investigation, the OFCCP will attempt to correct the violation. In addition, the OFCCP will make reasonable efforts to obtain compliance through conciliation.

The remainder of the enforcement order discusses the procedures for an EO 13496 report of noncompliance and the administrative proceedings that relate to a compliance investigation. The enforcement directive remains in effect until superseded or rescinded.

If you would like more information regarding EO 13496, please see our prior Legal Alert, "Federal Contractors to Post New Union Notice June 21, 2010," available on our web site at <http://www.fordharrison.com/shownews.aspx?Show=6219>. If you have any questions regarding this Legal Alert, please contact the author, [Benet Alsher](mailto:BenetAlsher@fordharrison.com), [balsher@fordharrison.com](mailto:balsher@fordharrison.com), any member of Ford & Harrison's [Government Contracts](#) practice group, or the Ford & Harrison attorney with whom you usually work.