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OFCCP'S PROPOSED "COMP TOOL" DOES NOT BODE WELL FOR EMPLOYERS

August 16, 2011

By Cara Crotty
Columbia Office

The Office of Federal Contract Compliance Programs issued an **Advance Notice of Proposed Rulemaking** on August 10, 2011, seeking input on a new "Compensation Data Collection Tool" that would replace the discontinued EO Survey. According to the Notice, the OFCCP is considering adopting some new practices that will substantially increase the burdens that employers who are federal contractors face. Among other things, the OFCCP is

- * **"Exploring the possibility" of using the data collected "to identify opportunities for nationwide multi-establishment compensation reviews."**
- * **Considering requiring companies to submit compensation information as part of the bidding process for federal contracts.**

The OFCCP says that it may use the tool to identify establishments for compensation audits and "to identify and analyze industry trends, Federal contractors' compensation practices and potential equal employment-related issues."

The agency developed the "EO Survey" in 2000, during the Clinton Administration, in its first attempt at analyzing compensation data from covered contractors and not just those who had been selected for audits. The flawed survey was rescinded in 2006 under the Bush Administration, after studies showed that it had little predictive value in assessing compliance or non-compliance.

The Obama OFCCP aims to replace the EO Survey with a new tool that would "effectively and efficiently identify supply and service contractors whose compensation data indicates that further investigation is necessary." The OFCCP sets out fifteen questions relating to the "scope, content and format of the data collection tool, as well as suggestions for ensuring that the tool will be an effective and efficient means of identifying contractors for review."

Comments are due by October 11, 2011. To submit a comment online, go to the U.S. government **eRulemaking Portal** and enter the RIN number 1250-AA03.

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If you have any questions about this Notice, please contact any member of Constangy's **Strategic Affirmative Action practice group**, or the Constangy attorney of your choice.

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