



Legal Alert: OFCCP Begins Development of Compensation Data Collection Tool

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Executive Summary: The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has published an Advanced Notice of Proposed Rulemaking (ANPRM) in the *Federal Register* seeking public input on its development and implementation of a compensation data collection tool to collect information on salaries, wages and other benefits paid to employees of federal contractors and subcontractors.

Background

The OFCCP enforces Executive Order 11246, which prohibits federal government contractors and subcontractors from discriminating in employment practices based on race, color, sex, national origin or religion. Such employment practices include compensation. Federal contractors know all too well the extensive efforts being undertaken by the OFCCP to examine compensation data during a compliance review.

ANPRM on Compensation Data Collection Tool

On August 10, 2011, the OFCCP published an ANPRM in the *Federal Register* seeking public input on its development and implementation of a compensation data collection tool to collect information on salaries, wages and other benefits paid to employees of federal contractors and subcontractors. In its news release announcing the ANPRM, the OFCCP states that "the tool would improve OFCCP's ability to gather data that could be analyzed for indicators of discrimination, such as disparities faced by female and minority workers." The deadline for submitting comments is October 11, 2011.

In its ANPRM, the OFCCP poses 15 questions related to developing its compensation data collection tool. Several of the questions seek input on the type of data the OFCCP should request, the set of job categories for which the data should be collected (i.e., EEO-1 code, AAP job group or occupational classification codes), the elements of compensation that should be collected, submission of compensation data as part of federal contract biddings, and the policies the OFCCP should request from contractors to assist the agency in understanding that contractor's compensation system.

The ANPRM also indicates that the compensation data collected through the tool may be used to identify contractors in specific industries for industry-focused compensation reviews. It seeks input on data the OFCCP

should request to compare compensation data across contractors in a particular industry.

In addition, the ANPRM indicates the OFCCP is exploring the possibility of using the data it collects through the tool to identify opportunities for nationwide multi-establishment compensation reviews. In its summary of the ANPRM, the OFCCP states that "[p]ossible uses for the collected data include generating insight into potential problems of compensation discrimination at the establishment level that warrant further review or evaluation by the OFCCP or contractor self-audit." The summary goes on to state that "OFCCP could use the data collected by the tool to conduct analyses at the establishment level, as well as to identify and analyze industry trends, Federal contractors' compensation practices and potential equal employment-related issues."

The Bottom Line:

Federal contractors are encouraged to submit their own comments to this ANPRM and/or to encourage industry-based organizations to submit comments. While comments will also be welcome following the publication of the Notice of Proposed Rulemaking, submitting comments at this earlier stage will assist in designing a compensation data tool which has contractor input. When submitting comments, contractors should focus on the increased burdens (i.e., time and money) which will be placed on them during a compliance review.

If you have any questions regarding the issues addressed in this Alert, please contact the authors, [Karen Tyner](mailto:ktyner@fordharrison.com), ktyner@fordharrison.com or [Jade Cobb](mailto:jcobb@fordharrison.com), jcobb@fordharrison.com, members of Ford & Harrison's [Affirmative Action Compliance and Plan Development](#) practice group, or the Ford & Harrison attorney with whom you usually work.