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OFCCP Announces Newly Revised Functional Affirmative Action Program Standards

On June 14, 2011, the Office of Federal Contract Compliance Programs (OFCCP), part of the U.S. Department of Labor, issued new standards for functional affirmative action programs (FAAPs). First instituted in 2000, FAAPs provide contractors the option to structure their affirmative action plans (AAPs) along functional business lines, rather than by each facility with 50 or more employees, which the OFCCP regulations otherwise typically require. A little over a year ago, the OFCCP indicated that the FAAP alternative was being suspended, pending revision of the criteria.

The newly revised criteria includes the following:

- The functional unit must include at least 50 employees, operate autonomously and have identifiable and distinct personnel practices. Further, the unit must track and maintain its own personnel activity data.
- All FAAP agreements must be affirmatively approved in advance by the OFCCP. Previously, such agreements were presumed to be approved after a lapse of time.
- Contractor compliance history will now be considered by the OFCCP in evaluating whether to approve an FAAP agreement. The agency will consider not just any existing conciliation agreements which it has with the contractor, but also any EEO violations by the contractor in the past three (3) years as determined by local, state or federal agencies.
- The effective duration of initial FAAP agreements has been reduced from five (5) to three (3) years.
- When a request for a FAAP agreement is received, OFCCP will request a conference with the contractor. Prior to the conference, the contractor must apply certain prescribed documentation, including VETS 100/100-A Reports, organizational charts, detailed information regarding the functional unit, employee demographic information, and personnel policies. At the conference, the contractor's representatives are expected to address a variety of identified issues, including outreach for the disabled and veterans.
- If a FAAP agreement is approved, the contractor must notify the OFCCP of any significant changes in its corporate structure impacting the functional unit.
- Annual updates to the OFCCP are required of any minor changes affecting the FAAP agreement.
- FAAP agreements may be terminated given ninety (90) days notice by either the OFCCP or the contractor. If terminated by the OFCCP, the FAAP agreement may not be reapplied for a period of three (3) years.

These new standards will significantly affect how contractors evaluate the FAAP alternative. If you have any questions regarding the FCCP's FAAP directive, please call George Johnston, in Venable's Baltimore office, at 410.244.7585.

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