



## Legal Alert: OFCCP Proposes Rescinding Systemic Compensation Discrimination Guidance

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The federal Office of Contract Compliance Programs (OFCCP) has issued a Notice of Proposed Rulemaking (NPR) rescinding its 2006 Standards interpreting Executive Order 11246 with respect to systemic compensation discrimination and its Voluntary Guidelines for Self-Evaluation of Compensation Practices. The Notice was published in the Federal Register on January 3, 2011.

EO 11246 requires federal government contractors and subcontractors to provide equal employment opportunity through affirmative action and nondiscrimination based on race, color, national origin, religion, or sex. Systemic compensation discrimination is a pattern or practice of disparate treatment. According to the NPR, the OFCCP is rescinding the Standards because they are too rigid and are inconsistent with the agency's traditional practice of tailoring compensation investigations and analysis to the facts of the case based on Title VII principles.

The NPR also states that the Standards significantly limit the OFCCP's ability to identify compensation discrimination "by imposing overly narrow investigation procedures that go beyond what would be required under Title VII principles in litigation." The OFCCP rejects the Standards' requirement that anecdotal evidence accompany statistical evidence of discrimination and the requirement to use multiple regression analysis to identify compensation discrimination.

Additionally, the NPR notes that since 2006, few contractors have used the analytical procedures outlined in the Voluntary Guidelines when analyzing their compensation practices and states that the Guidelines are too rigid and may be difficult for some contractors to meet.

Accordingly, the OFCCP proposes to rescind the Standards and the Voluntary Guidelines in their entirety. The OFCCP will continue to follow Title VII principles in investigating and analyzing compensation discrimination and in interpreting regulations related to compensation discrimination. The NPR provides that once rescinded, nothing in the Standards or the Voluntary Guidelines or their preambles could be relied upon as a statement of OFCCP's interpretation of Title VII principles or OFCCP regulations. Even after the Voluntary Guidelines are rescinded, contractors will still be required to conduct self-evaluations of compensation practices as required by 41 CFR 60-2.17(b)(3).

The OFCCP will accept comments on the NPR through March 4, 2011.

If you have any questions regarding the NPR or other issues relating to federal affirmative action obligations, please contact any member of Ford & Harrison's Affirmative Action Compliance and Plan Development Practice Group (Bennet Alsher, [balsher@fordharrison.com](mailto:balsher@fordharrison.com), Linda Cavanna-Wilk, [lcavanna-wilk@fordharrison.com](mailto:lcavanna-wilk@fordharrison.com), Karen Tyner, [kyner@fordharrison.com](mailto:kyner@fordharrison.com), or Jade Cobb, [jcobb@fordharrison.com](mailto:jcobb@fordharrison.com)) or the Ford & Harrison attorney with whom you usually work.