

## Column: OFCCP Announces Commitment to Training and Transparency: Can They Deliver?

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The Office of Federal Contract Compliance Programs ("OFCCP") is a federal agency charged with ensuring that approximately 200,000 federal contractors refrain from discrimination and take affirmative action to provide equal employment opportunities for certain protected classes of workers.

In recent years OFCCP has developed a reputation as being difficult to work with to resolve concerns and differences arising out of compliance audits. Additionally, compliance requirements under the jurisdiction of the OFCCP are generally not well understood.

On May 1, OFCCP took the first step in changing these perceptions by announcing its action plan to provide contractors with more compliance information and training and committing to more transparent investigations ("Action Plan").

### OFCCP Action Plan

OFCCP touts its Action Plan as designed to improve trust, communication and training by revising its compliance assistance materials, improving compliance officer and contractor training and education, and increasing transparency by implementing written expectations for contractors and compliance officers during compliance evaluations.

OFCCP targeted these areas of improvement based on the Government Accounting Office's (GAO) scathing review of OFCCP practices in 2017 and on concerns raised in town hall meetings conducted by OFCCP following issuance of the GAO report.

The GAO's report, titled "Strengthening Oversight Could Improve Federal Contract Nondiscrimination Compliance," was published September 2016. It provided six recommendations to the OFCCP regarding targeting their enforcement efforts to contractor populations with the greatest risk of noncompliance and improving OFCCP compliance assistance efforts.

Taking the GAO recommendations

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Federal equal employment opportunity regulations and affirmative action plan requirements are complex. Since 2012, OFCCP has focused on enforcement to the detriment of its outreach efforts.

In its Action Plan, OFCCP states that it is committed to replacing outdated and missing compliance assistance documents and technical guides. The Action Plan also addresses improving compliance officer training and education to enhance the credibility of the program and the quality of compliance evaluations.

### Commitment to communications

Of particular importance in the Action Plan is OFCCP's commitment to increase communications during compliance investigations.

In the past, OFCCP has been reluctant to provide contractors the information that supports a non-compliance finding, compromising the contractor's ability to be compliant in the future.

According to the Action Plan, a common issue raised in the town hall meetings was a lack of written expectations for compliance officers and contractors during the review process.

OFCCP plans to achieve consistency across regional and district offices by implementing a "uniform approach to the use of Predetermination Notices" ("PDN") in cases where the agency believes discrimination findings may be imminent.

PDNs will be issued for preliminary individual and systematic discrimination findings identified during a compliance evaluation, allowing contractors the opportunity to respond prior to OFCCP issuing a Notice of Violation.

Regional offices are also no longer permitted to exercise discretion over issuing PDNs. Instead, the notices will be reviewed by the national office in order to ensure consistency among regions.

### "What Contractors Can Expect"

The Action Plan states that OFCCP will develop a document entitled, "What Contractors Can Expect" which is supposed to serve as a "Bill of Rights;" setting expectations for what contractors can expect during the investigatory process including timeliness, accuracy, communication, confidentiality and professionalism.

### What Lies Ahead?

The commitments set forth in the Action Plan are well overdue and welcome changes. Of course, it remains to be seen whether OFCCP can effectively implement these action items and can truly shift its culture toward transparency and effective assistance.

Although it may take some time to see the documents OFCCP commits to issuing to assist contractors in identifying their compliance obligations, contractors can hope to see immediate improvement in communication and transparency during the investigative process.

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