

# CLIENT UPDATE

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AUGUST 2023

## AUDIT

### **OFCCP ADOPTS NEW SCHEDULING LETTER AND ITEMIZED LISTING FOR SUPPLY AND SERVICE CONTRACTOR COMPLIANCE REVIEWS**

On Friday, August 24, the Office of Management and Budget (“OMB”) approved a new scheduling letter for Office of Federal Contract Compliance Programs (“OFCCP”) compliance reviews of supply and service federal contractor and subcontractor employers. The new letter and itemized listing will be used for all new supply and service compliance reviews scheduled on or after August 24, 2023.

The OFCCP also issued a supporting statement and Frequently Asked Questions. If you would like to read those supplemental materials, please email us and we will send you a link.

The approved letter and itemized listing reflect the pre-final version that was published in the Federal Register on April 17, 2023. The new letter increases the number of items in the itemized listing from 22 to 26—and within those 26 are an increased number of sub-items. Below is a summary of the changes in the new letter from the one that OFCCP had been using:

- Notifying employers about the start of the audit by email, not USPS
- Allowing employers to email their submissions to OFCCP or upload them via other secure electronic means

- Requiring employers that prepare multiple AAPs for their campus-like settings to submit every AAP they prepare for that campus, all at once, when the campus is selected for an audit
- Requiring documentation demonstrating the development and execution of action-oriented programs designed to correct any problem areas identified pursuant to 2.17(b)
- Requiring more documentation regarding employers' assessment of their veteran and disability outreach, including an assessment of the totality of the effectiveness of these efforts
- Regarding disability utilization: for each job group that does not exceed the OFCCP's 7% disability utilization goal, the employer will need to
  - o Provide a description of the steps taken to determine whether and where impediments for equal opportunity exist;
  - o Identify problem areas, including an assessment of its personnel processes, the effectiveness of its outreach and recruitment efforts, the results of its affirmative action program audit, and any other areas that might affect the success of the affirmative action program; and
  - o Develop and execute action-oriented programs designed to correct the problem areas
- Requiring universities to provide their IPEDS forms for the last three (3) years (to parallel the same type of submission that non-universities supply with 3 years of EEO-1 forms)
- Requiring employers to identify and provide information and documentation of policies, practices, or systems used to recruit, screen, and hire, including the use of artificial intelligence, algorithms, automated systems or other technology-based selection procedures
- Providing the number of employees at the start of the prior AAP year by race, not just by minority/nonminority status
- Providing two compensation data snapshots instead of just one year
- Supplying compensation data on temporary employees and individuals provided by staffing agencies
- Providing the factors that affect compensation
- Providing documentation and policies related to compensation
- Submitting documentation that the contractor has satisfied its obligation to evaluate its compensation systems, including:
  - o When the compensation analysis was performed
  - o The number of employees the compensation analysis included and the number and categories of employees the compensation analysis excluded
  - o Which forms of compensation were analyzed and how the different forms of compensation were separated or combined for analysis
  - o That compensation was analyzed by gender, race, and ethnicity

- o The method of analysis employed by the contractor
- Supplying copies of EEO policies, including antiharassment policies, policies on EEO complaint procedures, and policies on employment agreements that impact employees' equal opportunity rights and complaint processes (e.g., policies on arbitration agreements)

Roffman Horvitz will be monitoring OFCCP's audit scheduling activity and intends to schedule complimentary webinars about preparing a desk audit submission under the new expanded itemized listing once OFCCP issues its next announcement of scheduled compliance reviews (i.e., Corporate Scheduling Announcement List ("CSAL")).

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#### **About Roffman Horvitz**

Roffman Horvitz, PLC was built from the ground up to provide a best-in-class outside counsel option for federal contractor employers in the areas of OFCCP compliance, affirmative action plan preparation and design, and employment data analytics.