

CLIENT UPDATE

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PROTECTED VETERAN HIRING BENCHMARK, OFCCP CONTRACTOR PORTAL, OMB DIRECTIVE 15-RACE AND ETHNICITY CHANGES

This Client Update discusses three topics: The Protected Veteran Hiring Benchmark, OFCCP's Contractor Portal Certification Deadline, and OMB Directive 15 establishing new race and ethnicity data formats by 2029.

- 1. Protected Veterans Hiring Benchmark:** The OFCCP lowered the Protected Veterans Hiring Benchmark down to **5.2%** for employers with AAP data cycles that began on or after April 1, 2024. For AAP employers who prepare their AAPs on a January 1-December 31 cycle, a February 1 – January 31 cycle, or a March 1 – February 28 cycle, the 2024 benchmark remains at 5.4%.
- 2. The OFCCP's Contractor Portal:** The OFCCP announced that non-construction (supply and service) federal contractor employers must certify compliance with their affirmative action plan obligations not later than Monday, July 1, 2024.

- a. Now that the portal is open, supply and service employers that have experienced a merger, acquisition, or spinoff since last year's certification process should access the portal and verify what FAAPs or establishments were in last year's certification list and begin to assemble the information necessary to edit or add locations or FAAPs for this year's certification deadline.
- b. Once you have your AAPs in hand, certify compliance for 2024. Please remember to take and save a screen shot of the OFCCP's confirmation page for your records.
- c. The Contractor Portal will continue to collect DUNS numbers rather than UEIs as contractor identifiers. OFCCP is still in the process of seeking renewal for the Contractor Portal from OMB, which is set to expire on August 31, 2024. In OFCCP's notice of proposed renewal, it proposes to update the Contractor Portal to collect UEI rather than DUNS numbers, but that will not affect the current filing cycle.

3. OMB Directive 15 – New Race and Ethnicity Self-Identification Categories:

<https://roffmanhorvitz.com/documents/omb-directive-15-new-race-and-ethnicity-categories-march-29-2024.pdf>

Last Friday, the Office of Management and Budget (OMB) announced the new race and ethnicity categories that federal agencies will be migrating to in the coming years. See Attached PDF. *There is no immediate action by private employers, just yet, unless you are about to negotiate a multi-year agreement with a vendor who collects, stores, and processes this information on your behalf (see iv below).*

- a. First, the federal agencies have 18 months to develop their action plans for migrating the data, and they have to submit their plans to the public at the same time that they are sending their proposal action plans to OMB.
- b. Then, organizations that submit data to these federal agencies will have until 2029 to migrate.
- c. While we encourage organizations to familiarize themselves with this new OMB Directive now, we also want to allay concerns that insufficient time is being allotted for this transition.
- d. We understand that organizations collect and report out a lot of data using the existing demographic race and ethnicity categories for reasons other than applicant and new hire self-identification, EEOC reporting, and AAP preparation purposes. But focusing on EEOC reporting and AAP reporting, for now:
 - i. Organizations using a two-question self-identification format (asking

about Hispanic ethnicity separately from asking about race) eventually are going to need to transition over to a 1-question format. (See examples in the attached PDF, pages 22193 and 22194, the 12th and 13th pages of the PDF).

- ii. Organizations will need to amend their questionnaires to capture the separate Middle Eastern or North African category, which is currently included in the White category.
- iii. Organizations that capture multi-racial designations into a “Two or More” database field are going to need to figure out how to record every separate race when an applicant or employee self-identifies as belonging to multiple categories.
- iv. Your self-identification forms are going to have to adapt before 2029, and the *databases* and *software applications* being used to collect this information also will have to adapt. *If you are about to negotiate any new multi-year agreements with third party vendors who collect this information on your behalf, you should consider addressing the cost of these transition issues in your negotiations.*
- v. The directive also states: “when data are collected through visual observation, agencies are not required to collect detailed categories and are encouraged to instead use the minimum categories.” We view this sentence to make it more likely than not that OFCCP and EEOC will expect government contractor employers to use the minimum categories (p. 22194 on PDF page 13) and not the more detailed categories that envision free-form text write-ins (p. 22193 on PDF page 12).

If you have further questions about these topics, please let us know how we can assist.

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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.