

Office of Federal Contract Compliance Programs

# Directive (DIR) 2018-09



## U.S. DEPARTMENT OF LABOR Office of Federal Contract Compliance Programs

**A Directive (DIR) is intended to provide guidance to OFCCP staff or federal contractors on enforcement and compliance policy or procedures. A DIR does not change the laws and regulations governing OFCCP's programs and does not establish any legally enforceable rights or obligations.**

**Effective Date: September 19, 2018**

1. **SUBJECT:** OFCCP Ombud Service
2. **PURPOSE:** To announce planned implementation of an Ombud Service in the national office to facilitate the fair and equitable resolution of specific types of concerns raised by OFCCP external stakeholders in coordination with regional and district offices.
3. **REFERENCES:**
  - A. Government Accountability Office, *Strengthening Oversight Could Improve Federal Contractor Nondiscrimination Compliance*, GAO-16-750, Sept. 22, 2016 at <https://www.gao.gov/products/GAO-16-750> (last accessed July 18, 2018).
4. **AFFECTED POLICY:** None
5. **DEFINITIONS:** "External stakeholders" as used in this Directive includes federal contractors and subcontractors, contractor representatives, industry groups, law firms, complainants, worker rights organizations, and current and potential employees of federal contractors and subcontractors.
6. **BACKGROUND:** The Government Accounting Office's (GAO) *Equal Employment Opportunity: Strengthening Oversight Could Improve Federal Contract Nondiscrimination Compliance* report, dated September 2016, recommended OFCCP review and enhance contractor compliance assistance, and increase transparency and communication with agency stakeholders. GAO expressed concern in the report that "Stakeholders and contractors fear that asking OFCCP for assistance would call attention to them and possibly make them a target for future OFCCP enforcement actions, such as compliance evaluations." This fear exists even though OFCCP has assured the contractor community that there are no ramifications for contacting OFCCP to ask questions.

OFCCP also conducted three Compliance Assistance Town Halls in September 2017, followed by three stakeholder meetings in January 2018. Based on feedback from these events, OFCCP proposed among other things developing an ombudsman program as part of its effort to increase transparency and communication with agency stakeholders. This proposed deliverable is part of *OFCCP's Town Hall Action Plan*.

OFCCP is committed to transparency in its mission, policies, and practices. Transparency is the foundation of a relationship of respect, dialogue, and feedback with its stakeholders that will help the agency improve its effectiveness in both

compliance assistance and evaluations. Transparency will also improve operational consistency and efficiency within the agency, allowing for a more efficient approach to compliance evaluations. Increased transparency will also support the contractors' ability to conduct meaningful self-audits so they can proactively identify and address issues with their employment practices.

OFCCP is certain that regional and district offices make every effort to process all compliance evaluations and complaint investigations efficiently, effectively, and in accordance with OFCCP regulations and guidance. In most cases, employers receive final compliance determinations in a timely manner and are able to resolve issues successfully by contacting the associated district office and elevating the issue, if necessary, to the regional office. However, OFCCP understands and wants to be responsive to concerns raised in the GAO report by certain external stakeholders that it does not have an independent mechanism through which external stakeholders, after having exhausted district and regional office channels, can share their concerns with OFCCP about a particular open matter or provide general feedback and recommendations to improve the administration of the agency.

An OFCCP Ombud Service would fill this gap and fit squarely within OFCCP's broader initiative to improve transparency in its compliance evaluation and compliance assistance activities. The Ombud Service would bring an impartial and independent perspective to facilitate communication with external stakeholders on OFCCP matters in collaboration with OFCCP regional and district offices. It would provide assurance to contractors and other stakeholders that OFCCP is treating them fairly, in a manner consistent with agency legal authorities, policies, and procedures, and would ultimately improve the efficiency and effectiveness of internal OFCCP operations.

#### **7. ROLES AND RESPONSIBILITIES:**

A. National Office: It will be the responsibility of OFCCP's national office to designate or hire an OFCCP Ombud with approval by appropriate personnel divisions within the Department of Labor. The Ombud will be a career staff position reporting directly to the career Deputy Director. OFCCP's national office will also consider and act upon, as appropriate, recommendations provided by the OFCCP Ombud.

B. Ombud: It will be the responsibility of the OFCCP Ombud, in consultation with OFCCP national and regional offices, to design, implement and execute an OFCCP Ombud Service in accordance with the general policy outlined in this directive. This includes the development of detailed procedures and guidelines as well as a public outreach and education campaign to OFCCP stakeholders.

8. **POLICY OR PROCEDURE:** OFCCP will pursue the development of an Ombud Service to facilitate the fair and equitable resolution of concerns raised by OFCCP's external stakeholders, conduct independent and impartial inquiries into issues related to the administration of the OFCCP program, and propose internal recommendations to continuously improve the quality of services OFCCP provides to its stakeholders.

The Ombud Service should require the Ombud to:

- Listen to external stakeholder concerns about OFCCP matters and suggestions for improvements;
- Promote and facilitate resolution of OFCCP matters at the district and region office level;
- Work with OFCCP district and regional offices as a liaison to resolve certain issues after stakeholders have exhausted district and regional office channels;
- Refer stakeholders to the OFCCP Help Desk for routine compliance and technical assistance inquiries;
- Accept and review matters referred directly by the national office; and
- Have the discretion to reject a referral in appropriate circumstances.

The Ombud Service will not:

- Advocate for either side of a dispute;
- Give legal advice, analysis, opinions, or conclusions;
- Conduct compliance evaluations, complaint investigations or participate in conciliation agreement negotiations; and
- Have any role in conduct or discipline issues regarding OFCCP.

9. **ATTACHMENTS:** None.

/S/

Craig E. Leen

Acting Director

Office of Federal Contract Compliance Programs

*The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.*

*Last updated on September 19, 2018*

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