

Office of Federal Contract Compliance Programs

Directive (DIR) 2019-04



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: February 13, 2019

1. **SUBJECT:** Voluntary Enterprise-wide Review Program (VERP)

2. **PURPOSE:** To establish a voluntary enterprise-wide compliance program for high-performing federal contractors.

3. **REFERENCES:**
 - a. DIR 2019-02, Early Resolution Procedures (Nov. 30, 2018).
 - b. DIR 2019-03, Opinion Letters and Help Desk (Nov. 30, 2018).

4. **AFFECTED POLICY:** None.

5. **BACKGROUND:** The Office of Federal Contract Compliance Programs (OFCCP) enforces Executive Order 11246, Section 503 of the Rehabilitation Act of 1973 (Section 503), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA). Collectively, these laws prohibit federal contractors and subcontractors from discriminating on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, disability or status as a protected veteran.¹ Additionally, contractors must act affirmatively to ensure equal employment opportunity in their employment processes, and they must not discriminate against applicants or employees because they inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations.

OFCCP ensures compliance with these laws by providing compliance assistance to help contractors proactively comply with their requirements, conducting evaluations of contractor establishments, and pursuing enforcement against non-compliant contractors when necessary. The number of compliance evaluations OFCCP can conduct annually covers a fraction of the total number of contractors that fall within the agency's jurisdiction.² As a result, OFCCP uses innovative approaches to increase its impact and reach more establishments during compliance evaluations. One example of this is the agency's recently implemented Early Resolution Procedures directive, which promotes and provides voluntary incentives for early corporate-wide resolution of violations during OFCCP compliance evaluations.³

Similarly, OFCCP has significantly expanded its compliance assistance offerings to promote proactive compliance and educate contractors – most of which are not actively under review by OFCCP – about their obligations. OFCCP compliance assistance takes many forms including published materials on OFCCP's website such as the agency's Federal Contract Compliance Manual, technical assistance guides, and frequently asked questions. OFCCP also hosts web-based contractor

seminars, participates at conferences and events hosted by contractor groups and provides one-on-one compliance assistance with contractors upon request. The agency responds to specific inquiries by phone or email through its Help Desk, and plans to enhance compliance assistance further by making certain Help Desk responses dynamically available and searchable as a self-service option on its website and publishing agency opinion letters in response to fact-specific inquiries.⁴

This directive initiates the development of a Voluntary Enterprise-wide Review Program (VERP). The program enables OFCCP to blend its compliance evaluation and compliance assistance activities to work with high-performing contractors toward a mutual goal of sustained, enterprise-wide (corporate-wide) compliance, outside of OFCCP's neutral establishment-based scheduling process. VERP complements the goals set forth in OFCCP's corporate-wide Early Resolutions Procedures directive and helps OFCCP be more effective in achieving its mission to protect workers, promote diversity, and enforce the law. Additionally, it provides meaningful cost-saving compliance incentives to federal contractor participants, and recognizes that some contractors excel in their corporate-wide compliance with OFCCP's requirements. VERP will also provide a path for companies who are close to excellence but want individualized compliance assistance from OFCCP to reach the top level.⁵

6. **ROLES AND RESPONSIBILITIES:**

- a. **National Office:** It is the responsibility of OFCCP's national office staff to implement the VERP as outlined below and consult with the Office of the Solicitor (SOL) to ensure the program complies with applicable laws and regulations.
- b. **Regional and Field Staff:** It is the responsibility of regional and field staff to conduct corporate-wide compliance reviews, as assigned, of VERP applicants and provide corporate-wide compliance assistance to contractors committed to achieving the VERP top level of performance, and to consult with regional SOL offices to ensure that individual reviews and agreements comply with applicable laws and regulations.

7. **POLICY:** OFCCP will pursue a VERP that facilitates and confirms enterprise-wide (corporate-wide) compliance by high-performing federal contractors and those aspiring to reach the top through individualized, corporate-wide compliance assistance. The VERP will officially recognize the outstanding efforts of its top-performing contractor participants, and remove VERP participants from the pool of contractors scheduled for compliance evaluations.⁶ It will also continue OFCCP's policy to promote corporate-wide commitments to equal employment opportunity policies and practices.⁷

OFCCP will develop and implement VERP using the following framework.

- The program will be voluntary for federal contractors.
- The program will recognize two tiers of contractors. The top tier will include top-performing contractors with corporate-wide model diversity and inclusion programs. The next tier will consist of OFCCP compliant contractors that will receive individualized compliance assistance to become top performers. Criteria for the top tier will be more stringent.
- The program will present an alternative to OFCCP's establishment-based compliance evaluations with a focus on recognizing contractors that have comprehensive, corporate-wide inclusion and compliance programs.
- Contractors will apply to the program electronically beginning in fiscal year 2020.
- During the application process, OFCCP will conduct compliance reviews of the contractor's headquarters location as well as a sample or subset of establishments.
- To participate in the program, contractors will demonstrate that they meet established criteria that verifies not only basic compliance with OFCCP's requirements, but a demonstrated commitment to and application of successful equal employment opportunity programs on a corporate-wide basis.
- With every contractor accepted into the program, OFCCP will enter into an agreement that removes the contractor from OFCCP's neutral scheduling process for the duration of the agreement, so long as the contractor abides by all terms of the agreement. The agreement will remain in effect for the duration of the contractor's participation in the program. OFCCP would retain the right to conduct individual and/or third party complaint investigations of contractors participating in the VERP.
- Contractors qualifying for the top tier can remain in the program for a period of five years and be re-evaluated to stay in the program at the five-year mark.
- Contractors qualifying for the second tier can remain in the program for three years and will receive individualized compliance assistance to become a top performer.
- To remain in VERP, OFCCP will expect contractors to maintain a workforce free of discrimination or other material violations, and provide periodic reports and information to OFCCP through which OFCCP can confirm these efforts.
- Program applicants who do not qualify for the program will return to the pool of contractors that OFCCP may schedule for compliance evaluations through OFCCP's neutral selection process. OFCCP will not automatically place rejected

applicants on a scheduling list.

- OFCCP will retain the right to terminate agreements with contractors who do not maintain the requirements of VERP and return these contractors to the pool from which OFCCP may schedule compliance evaluations.

8. **INTERPRETATION:** This Directive does not create new legal rights or requirements or change current legal rights or requirements for contractors. EO 11246, Section 503, the VEVRAA, OFCCP's regulations at 41 CFR Chapter 60, and applicable case law are the official sources for contractors' compliance responsibilities. Nothing in this Directive is intended to change otherwise applicable laws, regulations or other guidance or to restrict or limit OFCCP's ability to perform compliance reviews, request data, or pursue enforcement of any issue within its jurisdiction. This Directive is not intended to have any effect on pending litigation, nor would this Directive have altered the agency's basis for litigating any pending cases.

9. **ATTACHMENTS:** None.

/S/

Craig E. Leen

Director

Office of Federal Contract Compliance Programs

¹ In this directive, the terms "contractor" and "federal contractor" are used to refer to contractors and subcontractors with direct federal contracts and/or federally assisted construction contracts, unless otherwise expressly stated.

² OFCCP reviews one to three percent of federal contractor establishments annually.

³ See DIR 2019-02, Early Resolution Procedures, available at https://www.dol.gov/ofccp/regs/compliance/directives/dir2019_02.html.

⁴ See DIR 2019-03, Opinion Letters and Help Desk, available at https://www.dol.gov/ofccp/regs/compliance/directives/dir2019_03.html.

⁵ In exploring new models for compliance, OFCCP researched the Voluntary Protection Programs (VPP) offered by the Occupational Safety and Health Administration (OSHA). The purpose of VPP is to "recognize and promote effective worksite-based safety and health management systems." The following are some elements of VPP that may be instructive as OFCCP develops the VERP.

- Employers voluntarily submit an application to OSHA.
- OSHA sends a team of safety and health professionals to conduct an onsite evaluation.
- OSHA approves sites that qualify into one of three programs, depending on whether the employer meets set criteria.
 1. Star – for exemplary achievement.
 2. Merit – for good systems that need to take additional steps to reach Star level and possess resources to meet Star requirements within 3 years.
 3. Demonstration – for systems that differ from VPP criteria yet still demonstrate effectiveness.
- VPP participants are exempt from programmed OSHA inspections while they maintain their VPP status.

⁶ OFCCP regularly selects contractors for compliance evaluations using a neutral selection process published on its website, at www.dol.gov/ofccp.

⁷ For example, DIR 2019-02 seeks early resolutions with corporate-wide commitments in compliance evaluations with material violations.

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 February 13, 2019



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