

Office of Federal Contract Compliance Programs

Directive (DIR) 2022-02



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

A Directive (DIR) is intended to provide guidance to OFCCP staff and/or federal contractors on enforcement and compliance policy or procedures. A DIR does not change the laws and/or regulations governing OFCCP's programs and does not establish any legally enforceable rights or obligations. 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 to provide clarity to the public regarding existing requirements under the law or agency policies.

Effective Date: March 31, 2022

1. **SUBJECT:** Effective Compliance Evaluations and Enforcement
2. **PURPOSE:** To provide transparency on OFCCP's compliance evaluation policies and expectations for contractors.¹
3. **REFERENCES:** This directive references the following:
 - a. Executive Order 11246, as amended (EO 11246 or Executive Order);
 - b. Executive Order 13496, Notification of Employee Rights Under Federal Labor Laws;
 - c. Section 503 of the Rehabilitation Act of 1973, as amended (Section 503);
 - d. Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA);
 - e. 41 Code of Federal Regulations (CFR) Chapter 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor;
 - f. DIR 2018-06, *Contractor Recognition Program* (Aug. 24, 2018);
 - g. DIR 2018-08, *Transparency in OFCCP Compliance Activities* (Sept. 19, 2018);
 - h. DIR 2020-02, *Efficiency in Compliance Evaluations* (Apr. 17, 2020);
 - i. DIR 2021-02, *Certainty in OFCCP Policies and Practices* (Dec. 11, 2020); and
 - j. Federal Contract Compliance Manual (FCCM) (Dec. 2019, last updated Jan. 7, 2021).
4. **AFFECTED POLICY:** This directive rescinds and replaces DIR-2018-06, DIR 2018-08, DIR 2020-02, and DIR 2021-02. The policies and procedures described in this directive supersede any conflicting procedures in the FCCM or other previously issued guidance to the extent they could be read to conflict.
5. **BACKGROUND:** The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is committed to remedying employment practices that create barriers to opportunity and perpetuate inequality for workers. OFCCP administers and enforces three equal employment opportunity laws: Executive Order 11246, as amended (EO 11246 or Executive Order); Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503); and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA). Collectively, these laws, as amended, make it unlawful for contractors and subcontractors doing business with the federal government to discriminate in employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. In addition, contractors and subcontractors are prohibited from discriminating against applicants or employees because they inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations, and may not retaliate against applicants or employees for engaging in protected activities. These laws also require that federal contractors provide equal employment opportunity through affirmative action.

Certain contractors² are also subject to Executive Order 13496, Notification of Employee Rights Under Federal Labor Laws. Executive Order 13496 requires that covered contractors provide notice of employee rights under the National Labor Relations Act (NLRA), the law that governs relations between unions and employers in the private sector. The NLRA guarantees the right of employees to organize and to bargain collectively with their employers, to engage in other protected concerted activity with or without a union, or to refrain from all such activity.³

As part of its enforcement efforts, OFCCP conducts compliance evaluations of federal contractors to ensure they are meeting their nondiscrimination and affirmative action obligations, and the notice requirements in Executive Order 13496. This directive explains OFCCP's compliance evaluation policies and expectations for contractors. Specifically, this directive clarifies OFCCP's policies regarding scheduling of contractors for compliance evaluations, including enhancing the agency's neutral scheduling procedures to reach a broader universe of federal contractors and eliminating delays in scheduling. It also describes contractors' obligations to provide timely submission of complete Affirmative Action Programs (AAPs) and support data, supplemental information, and access to employees, applicants, and other witnesses.

OFCCP reaffirms its commitment to providing transparency, efficiency, and clarity in its compliance evaluation process while rescinding and replacing four prior directives, DIR-2018-06, DIR 2018-08, DIR 2020-02, and DIR 2021-02. The four prior directives are either outdated or modified by this directive to provide updated guidance and transparency on OFCCP's policies for compliance evaluations.

The agency is rescinding DIR 2018-08, *Transparency in OFCCP Compliance Activities*, to minimize the delay in remedying employment discrimination and positively impact more workers. DIR 2018-08 contains several policies that have caused misunderstanding and delay, such as dividing the AAP into a data portion and a non-data portion for desk audit submission and authorizing an automatic 30-day extension for submitting key compensation, employment activity, and other support data. This support data and the complete AAP provide the foundation for OFCCP's evaluation of a contractor's employment practices. In addition, DIR 2018-08 formalized an additional automatic 45-day scheduling delay after the issuance of a Corporate Scheduling Announcement List (CSAL) to notify contractors that they are included in OFCCP's scheduling list. As provided below, OFCCP is modifying these policies because they run counter to OFCCP's goal of conducting comprehensive compliance evaluations that foster consistent accountability and timely submission of required information. In addition to the CSAL and desk audit extension policies, DIR 2018-08 also included procedures on the pre-desk audit, desk audit, pre-site, offsite analysis, and OFCCP's conciliation efforts. OFCCP has incorporated many of these procedures in the FCCM and will continue to follow them.⁴ OFCCP will also continue to engage in regular communication with contractors at each phase of a compliance evaluation.

Through DIR 2022-02, OFCCP clarifies that when covered contractors use OFCCP's [Contractor Portal](#) to register and annually certify compliance with their AAP obligations, they are certifying that they have developed and maintained complete AAPs.⁵ This directive also describes contractors' obligations regarding timely submission of complete AAPs and support data, supplemental information, and access to employees, applicants, and other witnesses. This directive also promotes efficiency by explaining that OFCCP will no longer delay scheduling contractors for 45 days after the issuance of a CSAL. OFCCP will continue to provide information about its scheduling methodology.

OFCCP is also rescinding an outdated directive, DIR 2020-02, *Efficiency in Compliance Evaluations*. The directive references OFCCP enforcement data and measures from previous fiscal years, which the agency has accomplished or exceeded. OFCCP has prioritized the ongoing development of measures to study and strengthen its compliance evaluation procedures. Through DIR 2022-02, OFCCP explains the agency's objective of advancing efficiency and avoiding unnecessary delay in the review process.

Additionally, OFCCP is rescinding DIR 2018-06, *Contractor Recognition Program*, which had the purpose of recognizing contractors with high-performing compliance programs and supporting proactive compliance. Although OFCCP is rescinding this directive, OFCCP will continue to emphasize and support a proactive approach to compliance by contractors, including actively self-auditing employment systems to identify and resolve problems. Additionally, OFCCP places a strong emphasis on providing contractors with compliance assistance that identifies promising and proven actions to promote equal employment opportunity. Through HIRE, a [Hiring Initiative to Reimagine Equity](#), OFCCP is engaging a broad range of stakeholders to recognize innovative initiatives and evidence-based research to advance equity in recruitment and hiring practices, which the agency will utilize in providing compliance assistance resources.

Lastly, OFCCP rescinds DIR 2021-02, *Certainty in OFCCP Policies and Practices*, which committed the agency to an "ongoing review on at least an annual basis of all of its policies and practices." OFCCP continues to prioritize providing clarity on contractor compliance requirements and will update policies and practices as appropriate. Upon reconsideration, OFCCP does not believe an annual review of all policies and practices is practical or necessary. DIR 2022-02 fosters clarity by updating

OFCCP policies and expectations for contractors during compliance evaluations. OFCCP is committed to open communication with contractors, including through OFCCP's Ombuds Service, as well as OFCCP's help desk, which provides additional compliance assistance and guidance to federal contractors and stakeholders.

6. **ROLES AND RESPONSIBILITIES:**

Regional and Field Managers: It is the responsibility of regional and field managers to ensure that regional and field staff conduct compliance evaluations consistent with the policies and procedures stated in this directive.

Regional and Field Staff: It is the responsibility of compliance officers and other employees responsible for conducting or assisting with compliance evaluations to conduct compliance evaluations consistent with the policies and procedures stated in this directive.

National Office: It is the responsibility of OFCCP's national office to implement this directive and act in accordance with the policies and procedures stated in this directive.

7. **POLICIES AND PROCEDURES:**

a. Compliance Evaluation and Strategic Enforcement Objectives

OFCCP will positively impact more workers by increasing federal contractor compliance with nondiscrimination and affirmative action responsibilities. As part of its strategic enforcement, OFCCP will strengthen the effectiveness of compliance evaluations and promote greater contractor compliance by:

- i. Conducting comprehensive compliance evaluations that foster consistent accountability and avoid delay through timely submission of required information.
- ii. Promoting a proactive approach to compliance where federal contractors actively self-audit employment systems to identify and resolve problems in their employment practices.⁶ OFCCP places a strong emphasis on compliance assistance and providing practical resources to help federal contractors conduct effective self-audits, meet equal employment opportunity requirements, and remove barriers to opportunity.
- iii. Implementing a coordinated, cross-regional approach to conducting multi-establishment compliance reviews. Where an employer has multiple establishments scheduled for review pursuant to OFCCP's neutral scheduling methodology, OFCCP will coordinate evaluations of common policies and patterns across establishments. This coordination can benefit more workers where the contractor agrees to remedy violations and revise practices or policies company-wide or across a broader group of establishments that have similar practices to those identified during compliance evaluations of the scheduled establishments.
- iv. Promoting regular and open communication to ensure contractors understand the nature of any concerns identified and to facilitate a prompt and successful resolution of violations and completion of reviews. This includes transparent communication by all parties at each stage of the compliance evaluation, including but not limited to, the scheduling, pre-desk audit, desk audit, pre-onsite, offsite analysis, and conciliation phases.

b. Compliance Evaluation Scheduling and Timely Desk Audit Submission

To promote efficiency in compliance evaluations, reach additional contractors and positively impact more workers, OFCCP has implemented the following procedures:

i. Scheduling

- a. OFCCP is enhancing its neutral scheduling procedures for selecting federal contractors for compliance evaluations to reach a broader universe of contractors and subcontractors and to identify those with greater risk factors for noncompliance with nondiscrimination and affirmative action requirements.
- b. OFCCP will continue to provide information about its scheduling methodology to explain how the agency neutrally selects contractors for a compliance evaluation.
- c. OFCCP will continue to post a CSAL to notify contractors that they are included in OFCCP's scheduling list. To promote efficiency, OFCCP will no longer delay scheduling contractors for 45 days after the issuance of a

CSAL. As of the effective date of this directive, OFCCP may begin scheduling contractors upon the publication of the CSAL.

ii. Timely Desk Audit Submission and Extensions for Extraordinary Circumstances

- a. Supply and service contractors are required to develop an AAP within 120 days of the commencement of a covered federal contract and to update that AAP on an annual basis.⁷ Further, supply and service contractors must annually certify that they have developed and maintained complete AAPs⁸ in compliance with OFCCP's requirements through its Contractor Portal. Accordingly, OFCCP expects that contractors will be prepared to submit their AAP(s) and support data in accordance with the timeframes specified below.

Upon receipt of a Supply and Service Scheduling Letter and Itemized Listing or a Construction Scheduling Letter and Itemized Listing, a covered contractor that is scheduled on or after the effective date of this directive is required to submit all AAPs and itemized listing data, including support data, within 30 calendar days.⁹ Where a contractor needs additional time, OFCCP may grant an extension for extraordinary circumstances pursuant to the policies provided in 7(b)(ii)(b) below.

- b. OFCCP may grant an extension for submitting the information requested in the scheduling letter and itemized listing, including support data, in the event of extraordinary circumstances. Examples of extraordinary circumstances include, but are not limited to:

1. Extended medical absences of key personnel;
2. Death in the immediate family of key personnel;
3. Localized or company-specific disaster affecting records retrieval such as a flood, fire, or computer virus;
4. Unexpected military service absence of key personnel; and
5. Unexpected turnover or departure of key affirmative action official.¹⁰

As soon as the contractor is aware of an extraordinary circumstance, it may contact the OFCCP personnel listed on the scheduling letter to request an extension. OFCCP may ask for supporting documentation, where appropriate. OFCCP will decide whether to grant the extension on a case-by-case basis.

- c. It is important that contractors timely submit the AAP and itemized listing data, including support data. Failure to do so may result in the issuance of a Notice to Show Cause why OFCCP should not initiate enforcement proceedings. The Director of OFCCP also has discretion to immediately refer the matter to the Solicitor for administrative enforcement when a contractor refuses to submit an AAP or other requested information and efforts to conciliate the matter are unsuccessful.¹¹

More information on extensions can be found in OFCCP's Frequently Asked Questions page: <https://www.dol.gov/agencies/ofccp/faqs/scheduling-letters>.

c. Requests for Supplemental Information and Data

To promote the timely and efficient exchange of information needed to conduct a compliance evaluation, OFCCP reiterates its long-standing policy that the agency may request supplemental data, follow-up interviews, and/or additional records and information if the contractor's desk audit submission is incomplete or OFCCP identifies issues that warrant further analysis.¹² When requesting this supplemental information, OFCCP will reasonably tailor the request to the areas of concern, allow contractors a reasonable time to respond, and include the basis for the request.¹³ Where OFCCP finds additional compliance issues, these supplemental requests do not limit the agency's ability to request additional information or expand the investigation. Where OFCCP identifies potential indicators of discrimination in employment practices such as employment selection or compensation decisions, OFCCP may request a contractor's AAPs, personnel activity, policy implementation and supporting documentation to cover a period beginning two years before the date the contractor received the Scheduling Letter.¹⁴ For example, where OFCCP identifies hiring or pay disparities, it may request additional hiring and pay data to perform a refined analysis.

To fully investigate and understand the scope of potential violations, the agency may also request to examine records, including employment activity data such as hiring and compensation data created after the date of the Scheduling Letter to determine whether the practices in question have ended and to evaluate whether the practice has continued.¹⁵ Where the contractor has destroyed or failed to preserve records, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor.¹⁶

When entering conciliation discussions, OFCCP will request wage and benefits data and will consider information the contractor provides on mitigation, such as employee turnover data, for the purpose of accurately estimating make-whole relief. The exchange of this data will expedite the conciliation process.

d. Access to Employees, Applicants and Other Witnesses¹⁷

To facilitate efficient compliance evaluations, OFCCP underscores the importance of contractors providing access to their premises and records relevant to OFCCP's investigation.¹⁸ This includes records, such as personal contact information, personnel files, and applications that will enable OFCCP to contact employees, former employees, applicants, or other witnesses. Empowering and listening to workers to understand their experiences is an important priority for OFCCP. To ensure witnesses are comfortable communicating with OFCCP without the fear of reprisal, OFCCP may directly contact these individuals without the contractor serving as an intermediary. During these investigations, OFCCP will request that contractors provide the agency with unredacted contact information such as telephone numbers, mailing addresses, email addresses, and social security numbers for these individuals. OFCCP will take all necessary precautions to safeguard the confidentiality of the information, as required by its regulations and other applicable federal law.¹⁹ Contractors should be aware that actions by a contractor to limit an employee, applicant, or other witness' ability to assist or participate in OFCCP's compliance evaluation may constitute intimidation or interference.²⁰

When OFCCP conducts interviews with upper-level managers and directors in their management capacity that speak for, or make decisions on behalf of, the company, the contractor may have an attorney or another representative present.²¹ However, contractors should also note that when OFCCP is interviewing nonmanagement personnel, the contractor does not have the right to have a representative present.²²

The interviewee may request that a personal representative, such as a union representative or personal legal counsel, accompany the interviewee during the interview. In these circumstances, OFCCP will discuss the presence of the representative with the interviewee privately to determine whether there may be a conflict of interest or whether the interviewee feels pressured into having the person present.²³ When the interviewee wants a personal representative present during the interview, OFCCP will first obtain written confirmation of the representation, including the contact information for the representative and the scope of the representative's authority, if OFCCP does not already have the written confirmation.

For former employees who are relevant to the investigation, OFCCP may request from the contractor the best available contact information, including all available information on file such as telephone numbers, mailing addresses, email addresses, and social security numbers for these individuals. Generally, the contractor does not have a right to have a representative present for agency interviews of former employees, with some exceptions.²⁴

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, 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. Noncompliance with voluntary standards will not, in itself, result in any enforcement action. This directive is not intended to have any effect on pending litigation or alter the Agency's basis for litigating pending cases.

SIGNATURE:

Jenny R. Yang

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 that fall under OFCCP's jurisdiction, unless otherwise expressly stated.

2. Executive Order 13496 applies to all covered federal contracts except federally assisted construction contracts.

3. OFCCP is responsible for investigating compliance with Executive Order 13496 and refers potential violations to the Office of Labor-Management Standards for enforcement. See 29 CFR 471.13(a).
4. For example, procedures such as contacting the contractor within 15 days of sending the Scheduling Letter, providing a high-level summary of any preliminary indicators of discrimination in the onsite confirmation letter, and taking a collaborative approach with contractors during the exchange of information to promote a shared understanding of the issues and to promote resolution are incorporated into the FCCM. See FCCM 1B04 Follow-Up Contact with Contractor and Jurisdiction Challenges; 4F Notice of On-Site Review and Follow-Up Data Requests; and 8G Conciliation.
5. For further details on the complete AAP components and obligations, see 41 CFR part 60-2, subpart B; 41 CFR part 60-300, subpart C; and 41 CFR part 60-741, subpart C.
6. Covered contractors are required to conduct a self-audit of their employment systems, as provided in 41 CFR 60-2.17(b) and 60-2.17(d).
7. 41 CFR 60-2.1(c); 60-300.40(b) and (c); 60-741.40(b)(2) and (3).
8. For further details on the complete AAP components and obligations, see 41 CFR part 60-2, subpart B; 41 CFR part 60-300, subpart C; and 41 CFR part 60-741, subpart C.
9. See 41 CFR 60-1.20(e), 41 CFR 60-300.40(d), 41 CFR 60-741.40(c).
10. Key personnel would include employees responsible for contractor compliance with OFCCP's regulations, such as the official designated by the contractor pursuant to 41 CFR 60-2.17(a), 41 CFR 60-300.44(i), 41 CFR 60-741.44(i).
11. 41 CFR 60-1.26(b)(1), 60-300.65, and 60-741.65.
12. See 41 CFR 60-1.43, 60-300.81, and 60-741.81 (providing that the contractor must provide access to information relevant to the matter under investigation and pertinent to compliance with OFCCP's laws and regulations); see 41 CFR 60-1.12(c), 60-2.10(c), and 60-2.32 (describing a contractor's obligation to provide records).
13. OFCCP is not obligated to share the statistical analysis during this stage (e.g., standard deviation, b-coefficient, etc.). If OFCCP has preliminary findings after refining the analysis, OFCCP will issue a predetermination notice that describes the statistical findings.
14. In some investigations, it may also be necessary for OFCCP to request complete personnel files, including full salary history, in order to remedy potential discrimination. These files may pre-date the two-year period. See FCCM, 1C04 Additional Data Requests.
15. See FCCM Chapter 1C04.
16. 41 CFR 60-1.12(e), 60-300.80(c), 60-741.80(c).
17. This provision also applies to complaint investigations.
18. See 41 CFR 60-1.43, 60-300.81, and 60-741.81 (providing that the contractor must provide access to information relevant to the matter under investigation and pertinent to compliance with OFCCP's laws and regulations); see 41 CFR 60-1.12(c), 60-2.10(c), and 60-2.32 (describing a contractor's obligation to provide records).
19. See 41 CFR 60-1.20(f) and (g), 60-300.81, 60-741.81.
20. See 41 CFR 60-1.32(b), 41 CFR 60-300.69(b), and 41 CFR 60-741.69(b).
21. See FCCM 2F00, General Interview Principles and Procedures. One exception to this is that a management employee is not required to have the contractor's representative present for the interview if he or she is not speaking on behalf of the contractor. An example may be when the manager is a member of a potentially affected group speaking about the potential discrimination, or his or her personal experience; or acting as a whistleblower. *Id.*
22. *Id.*
23. *Id.*
24. See generally Jay M. Zitter, *Right of Attorney to Conduct Ex Parte Interviews with Former Corporate Employees*, 25 A.L.R. 7th Art. 7 (2017); Ann. Mod. Rules Prof. Cond. § 4.2, Comment 7 ("Consent of the organization's lawyer is not required for communication with a former constituent."). There may be some exceptions to this in certain jurisdictions, such as when the testimony of the former employee, by nature of the individual's position as a manager and/or agent for the company, could legally bind the contractor, or the former employee was exposed to privileged or confidential information. 25 A.L.R. 7th Art. 7. OFCCP will follow relevant legal and ethical authorities in these situations.



**Office of Federal Contract
Compliance Programs**

An agency within the U.S.
Department of Labor
200 Constitution Ave NW
Washington, DC 20210
[1-866-4-USA-DOL](tel:1-866-4-USA-DOL)
[1-866-487-2365](tel:1-866-487-2365)
www.dol.gov

FEDERAL GOVERNMENT

LABOR DEPARTMENT

ABOUT THE SITE

[White House](#)

[About DOL](#)

[Freedom of Information Act](#)

[Coronavirus Resources](#)

[Guidance Search](#)

[Disclaimers](#)

[Disaster Recovery Assistance Español](#)

[Plug-Ins Used on DOL.gov](#)

[DisasterAssistance.gov](#)

[Office of Inspector General](#)

[Accessibility Statement](#)

[USA.gov](#)

[Subscribe to the DOL Newsletter](#)

[Notification of EEO Violations](#)[Read the DOL Newsletter](#)

[No Fear Act Data](#)

[Emergency Accountability Status Link](#)

[U.S. Office of Special Counsel](#)[A to Z Index](#)

Connect With DOL



[Site Map](#)

[Important Website Notices](#)

[Privacy & Security Statement](#)