

OFCCP Issues Second Construction Contractor Audit List, Increasing Scrutiny of Contractor Compliance

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The Office of Federal Contractor Compliance Programs (OFCCP) has long been interested in greater scrutiny of the affirmative action planning (AAP) efforts of contractors performing construction work directly for the federal government or in connection with federally assisted construction projects. That wish may be granted soon.

OFCCP Director Jenny Yang [has indicated](#) that OFCCP intends to reinvigorate the agency's [construction contractor program](#) for reviewing compliance with construction contractor obligations under Executive Order 11246, Section 503 of the Rehabilitation Act, and the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA). That intention coincides with federal government efforts to emphasize infrastructure improvements.

To further that effort, OFCCP on September 1, 2021, issued a second federal construction contractor [Corporate Scheduling Announcement List](#) (CSAL), identifying an additional 400 construction compliance reviews. (The first CSAL was issued April 8, 2019.) Simultaneously, OFCCP disclosed its [Methodology for Developing the CSAL](#).

A CSAL does not trigger a compliance review (audit) but, rather, provides contractors advance notice that one is coming, so contractors can prepare. OFCCP audits are triggered by a "[scheduling letter](#)," which requires a construction contractor to submit documents and data for OFCCP's *on-site* review and make supervisors and employees available for interview.

The new CSAL does not replace the [2020 construction contractor CSAL](#) identifying contractors for audits, known as "[compliance checks](#)." [Compliance checks](#) are not full-blown audits; they are off-site record-keeping reviews, but still present risks. They require submission of examples of personnel and payroll records, job postings, accommodation requests, and copies of current Section 503 and VEVRAA affirmative action plans.

Full-blown OFCCP audits, such as those in the [new CSAL](#), are much more involved and create greater risk. Such audits require submission of personnel activity and workforce data, as well as comprehensive documentation to demonstrate compliance with the "16 Specifications" in the Equal Opportunity Contract Clause at [41 C.F.R. § 60-4.3](#). The Specifications are paragraphs 7(a) through 7(p) of the Clause and apply not only to federal construction work and projects, but to all construction work and projects performed by a covered federal construction contractor across the United States.

The 16 Specifications can be summarized or bucketed into the following:

- Anti-discrimination and harassment policies, practices, and procedures;
- Training for supervisors regarding AAP and equal employment opportunity

obligations and efforts;

- Outreach efforts to actively recruit women and minorities;
- Apprenticeship and training programs for women and minorities;
- Providing notices to unions, subcontractors, and vendors of the AAP policies, obligations, and efforts; and
- Tracking and analysis of workforce, payroll and personnel activity data for indications of practices that adversely impact the participation of women and minorities in construction work.

Section 503 and VEVRAA impose similar obligations for protected veterans and individuals with disabilities.

While OFCCP does not impose monetary fines or penalties for violations of EO 11246, Section 503, or VEVRAA, it can recover monetary damages for alleged discrimination in employment practices, particularly hiring and pay practices. For other, technical violations, OFCCP may require a contractor to fix the violations and demonstrate compliance to OFCCP through documentation and progress reports. Such requirements effectively extend an audit and can create additional risks.

In order to determine if a contractor is subject to AAP obligations, a contract review may be necessary. Covered construction project contracts and subcontracts contain the Equal Opportunity Clause referred to at [41 C.F.R. § 60-4.3](#).

For contractors identified in either CSAL, now is the time to prepare. For covered contractors not on a CSAL, it appears likely that OFCCP will issue additional construction contractor CSALs in coming fiscal years.

Please contact a Jackson Lewis attorney if you have any questions and would like assistance with your AAP compliance efforts.

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