

ALERT

OFCCP Issues 1,000 Corporate Scheduling Announcement Letters Signaling Possible Auditing of Selected Contractors

February 8, 2018

WHAT: The Office of Federal Contract Compliance Programs (OFCCP) has announced that it recently mailed a thousand Corporate Scheduling Announcement Letters (CSAL) to contractors on February 1, 2018. The CSAL is not a letter scheduling an audit. The letter instead notifies an establishment that it may be audited in the coming scheduling year.

The OFCCP has said that this year, in a change from previous years, no more than 10 establishments of a single contractor will be placed on the scheduling list, and no establishment with an audit that has been closed in the previous five years will be placed on the scheduling list.

WHEN: The CSAL letters were sent out to contractors on February 1, 2018. Audit scheduling letters are to be mailed out to contractors on March 18, 2018.

WHAT DOES IT MEAN FOR INDUSTRY: Contractors who receive a CSAL should immediately begin preparing for an OFCCP audit. The CSAL is a courtesy measure, providing the contractor with extra time to begin its own self-audit process to ensure compliance with equal-employment obligations. Once a contractor receives a scheduling letter, it only has 30 days to complete and tender to the OFCCP the items requested.

The OFCCP's current standard scheduling letter asks for a broad swath of 22 items from the contractor, including its Affirmative Action Plan (AAP), an organizational display of workforce analysis, its

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method and formation of job groups, various analyses concerning the results of the contractor's outreach and recruiting programs, copies of the contractor's EEO-1 reports, and extensive information related to compensation for individual employees.

A contractor who does not receive a CSAL in this cycle should not rule out being audited in the coming year. The OFCCP warns that a contractor may still be selected for audit because of a contract award notice, a directed review, monitoring initiated under a previous conciliation agreement, or an individual complaint.

If a contractor has received a CSAL, it will find therein an invitation for it to utilize the various compliance assistance resources and activities provided on the OFCCP's website and district and regional offices.

The OFCCP, under new leadership from Director Ondray T. Harris, has not indicated that it will change its lengthy, "deep-dive" audit practices initiated under the prior administration's leadership. The OFCCP has further shown that it will continue to focus on an Obama administration enforcement priority of systemic compensation discrimination, so contractors should prepare to have their compensation systems audited. In 2017, the OFCCP took enforcement actions against large contractors such as Google, JPMorgan & Chase, and Oracle, all of which focused on the contractors' compensation structures. In recent representation of our clients undergoing the audit process with the OFCCP, the OFCCP has taken an aggressive approach to issuing Notices of Violation concluding that a facility has engaged in compensation discrimination. Patterns we have observed of late include:

- The OFCCP's insistence on including broad groupings of disparate job titles into single pay analysis groups for statistical analysis under OFCCP Directive 307
- Extensive interviewing of employees and company officials regarding compensation practices
- Refusal to provide underlying data statistics and methodologies used in the OFCCP's analysis of the contractor's compensation structure

In light of these trends, contractors should ensure that their EEO-1 groupings of employees are sound and defensible, and be prepared to explain to the OFCCP how the company's compensation structure has been formulated and applied to each individual employee. Recipients of CSALs should be particularly proactive in ensuring that their EEO obligations and AAPs are presently in compliance with applicable law. An ability to defend pay practices and prove the contractor is meeting its EEO & AAP obligations will be critical to expedient closure of an OFCCP audit and avoidance of a Notice of Violation.