



## **Federal Contractors – You don't have enough to do! (a/k/a the OFCCP is adding more to your workload)**

Federal contractors and subcontractors can take a small breath – this Spring's compliance review letters are all out. If you have not received an audit letter by now, you can breathe easy for the next couple of months. After that, a new round of letters is expected!

If you are involved in an audit this year you know how aggressive the OFCCP (Office of Federal Contract Compliance Programs) has been, and the agency is not going to back down. There has been a definite decrease in the number of successfully closed audits. In FY2008, 86% of all contractors received letters of compliance vs. 65% in 2012. The deficiencies found (resulting in a conciliation agreement but no finding of discrimination or financial settlements) have been largely due to poor record keeping and a lack of demonstrated outreach to local veteran/disabled, minority and female organizations. The OFCCP's largest financial settlements have been in the applicant flow area where lack of good record keeping (every audit's downfall) can be interpreted by the OFCCP as discrimination.

This April, the OFCCP submitted its budget request of \$108,467,000 to support its FY2014 strategies, which also includes the hiring of 753 more employees. The budget increase request highlights the OFCCP's continued focus on, among other things, narrowing the pay gap between men and women, eradicating gender, racial and ethnicity-based discrimination in the construction trades, and ensuring that federal contractors recruit, hire and retain veterans and individuals with disabilities. The new budget request will add additional muscle, more auditors and increased demands on contractors. Already overburdened federal contractors and subcontractors will be expected to produce even more records during audits.

Director Shiu's issuance of Directive 307 in January, 2013 will now require additional compensation data during a compliance review. It is now routine for the OFCCP to request 16 or more compensation data points for the contractor's entire workforce. Unfortunately, contractors must expend a large amount of time to sift through personnel records in response to the OFCCP's additional request.

What is a federal contractor to do? **Take the time now**, before you receive "the letter," to analyze and address some of the most critical areas in OFCCP compliance such as:

This article is intended for general information only and should not be construed as legal advice. You are urged to contact PMP or your own advisors on your unique situation.

© Portnoy, Messinger, Pearl & Associates, Inc. | [www.pmpHR.com](http://www.pmpHR.com) | 516.921.3400

- **Compensation:** Under the Obama administration, the OFCCP is the lead point-agency of the government on pay discrimination. To avoid large financial consequences, contractors should analyze their compensation by job title (or by employees performing essentially the same type of work) and be able to defend, with appropriate records, any difference in compensation among these employees. A contractor must have records to back-up and defend:
  - a. How it determines starting salary;
  - b. How internal pay equity is addressed;
  - c. Up-to-date job descriptions that identify skill, responsibility, and education, in addition to other documentation to substantiate compensation differentials;
  - d. How the company determine bonuses, selection for overtime, selection of sales areas, etc.
  - e. Written employee reviews indicating consistently applied salary increases.
  
- **Applicant flow vs. hires:** This has been and continues to be the “Achilles heel” for most contractors. Contractors need to review their applicant process to be sure that:
  - a. A policy and procedure is in place, from job posting to hire, that adheres to the “Internet Applicant” regulation;
  - b. All jobs are posted with the local DOL/Job Bank where the position is located along with **local organizations** that assist veterans, disabled, females and minorities with their job searches.
  - c. Race and gender information are requested early in the process, but no later than once a job seeker has been identified as an “applicant”;
  - d. The “applicant pools” are not too small or too large;
  - e. The company has defensible reasons for **rejection** of all applicants who were not hired.

Of course, having a well-written plan and good personnel data is essential. Beginning January 1, 2014, contractors will have to allow more time when updating their affirmative action plan as they must begin using the new census data for their RRA (reasonable recruiting area).

These are only some of the areas contractors need to address. For additional points, please contact PMP. It is critical that contractors have unimpeachable applicant flow and compensation data in order for them to successfully close an audit now. To do this, contractors must gather their team and painstakingly review their applicant process and their compensation data while keeping the above points in mind. Yes, it takes time, and yes, it takes staff – but the alternative is a costly end to an audit and other potential undesirable consequences.




---

*PMP provides personalized affirmative action guidance and assistance to clients throughout the United States. We are very proud of our exceptional record of successfully closed OFCCP audits. To discuss your company's policies, or to discuss compliance assistance, please contact Grace Conti at 516-921-3400 or [gconti@pmpHR.com](mailto:gconti@pmpHR.com).*