

AFFIRMATIVE ACTION UPDATE

**** NEWS FLASH ****

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Douglas B. Brown & Associates, LLC

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REVISED OFCCP SCHEDULING LETTER

On September 30, 2014, the OFCCP announced that the Office of Management and Budget (OMB) had approved most of the revisions to the OFCCP's scheduling letter originally proposed in May of 2011. The revisions fundamentally change the data that must be collected and submitted to the Agency during the initial desk audit portion of a compliance review.

Most striking is the expansion to 22 items, from 11, items that will have to be submitted in response to the receipt of a scheduling letter. The OFCCP estimates that contractors will have to spend only 27.9 hours on evaluating instructions, searching data sources, gathering and maintaining data, and completing and evaluating the collection of the requested data. This estimation speaks for itself.

The OFCCP is graciously giving the contractor community two weeks to become acquainted with the new requirements. To that end, the Agency will not be scheduling any compliance reviews during the period of October 1 to October 15, 2014.

A discussion of the revisions and their implications for contractors appears below.

ITEMIZED LISTING

EXECUTIVE ORDER AAP

Items 1 – 6 regarding the contents of the Executive Order AAP remain unchanged from the prior version of the scheduling letter. Contractors must continue to submit 1) an organizational profile; 2) job groups; 3) current minority and female incumbency for each job group; 4) minority and female availability for each job group; 5) comparison of incumbency to availability (utilization); and 6) placement goals.

SECTION 503 - DISABILITIES

Items 7 – 10 are all new.

- Item 7 requests the results of the evaluation of effectiveness of outreach and recruitment efforts for individuals with disabilities.
- Item 8 seeks documentation of efforts to comply with the audit and reporting requirements.

- Item 9 requests documentation of the data collection analysis in 60-741.44(k). As this is included in Subpart C of the revised regulations, it will not come into play until contractors have started their new plan year following the implementation of the regs on March 24, 2014.
- Item 10 requests the utilization analysis of individuals with disabilities. As above, since this is included in Subpart C of the revised regulations, it will not come into play until contractors have started their new plan year following March 24, 2014.

SECTION 4212 (VEVRAA)

Items 11 – 14 are all new requirements.

- Item 11 requests the results of the evaluation of effectiveness of outreach and recruitment efforts for protected veterans.
- Item 12 seeks documentation of efforts to comply with the audit and reporting requirements.
- Item 13 requests documentation of the data collection analysis in 60-300.44(k). As this is included in Subpart C of the revised regulations, it will not come into play until contractors have started their new plan year following the implementation of the regs on March 24, 2014.
- Item 14 requests documentation of the hiring benchmark adopted, the method of establishment for the bench mark, and results. As above, this is included in Subpart C of the revised regulations; it will not come into play until contractors have started their new plan year following March 24, 2014.

SUPPORT DATA

- Item 15 is the same as the former Item 7, requiring the submission of the last 3 years of EEO-1 reports.
- Item 16 is the same as the former Item 8. This requires a copy of your collective bargaining agreement (CBA), if applicable. Copies of all other documents implementing the CBA should be included.
- Item 17 is the same as the former Item 9. This requires the submission of information regarding affirmative action goals for the preceding AAP year and if applicable, progress towards goals for the current year. If more than six (6) months into the current plan year, the contractor must also submit information reflecting progress on goals established in their current AAP year.
- Item 18 is similar to the former Item 10, regarding personnel activity (applicants, hires, promotions and terminations) for the prior plan year as well as the current year if more than six (6) months into the plan year. However, there are some notable changes.

- Applicants and Hires – As before, contractors will have to submit data on the total number of applicants and hires by either AAP job group, or job title. However, as opposed to submitting the data in the aggregate for minorities and non-minorities, the minority data will have to be broken out by the individual racial groups (African American/Black, Asian/Pacific Islander, Hispanic, American Indian/Alaskan Native, and White). For gender, the data will continue to be reported by female/male. **(Note – there is no request for data regarding individuals who self-identify as “Two or More Races” even though the EEOC requires this racial designation for EEO-1 reporting. We believe that pending further clarification, contractors should continue to solicit and report “Two or More Races” on their self-id forms and when submitting data to the OFCCP during a compliance review and let the Agency decide how they want to handle the category.)**

- Promotions – The requirements of this section have significantly changed. Previously, the letter required data on total promotions, as well as minority and female promotions by either job group or job title. As with hires, the new letter requires the data for minorities to be broken out by race and ethnicity. In addition, it now stipulates that contractors provide data on the actual pool of individuals who applied or were considered. To comply, if contractors post positions internally, they must now maintain flow logs of the employees bidding on a position, as well as anyone that is considered for a non-competitive promotion.

Additionally, information defining what constitutes a “promotion” in the contractor’s organization must be provided.

- Terminations – Termination data must also be submitted by gender and race/ethnicity. If presenting the data by job title, data on the department and job title from which the termination occurred must be reported.

- Item 19 involving compensation is substantially expanded from the prior Item 11. Item 19 now requires the submission of “employee level” (e.g. individualized) compensation data. The data now requested essentially mirrors the information previously requested in the 12-14 item data report that has become a part of almost all compliance reviews.

The request for “employee” data includes but is not limited to full-time, part-time, contract, per diem or day labor, and temporary employees. As such, the OFCCP is requiring the submission of compensation data for employees **who may not even be included in the AAP!**

For each employee, contractors must provide:

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| ▪ Employee ID or name | ▪ Job title |
| ▪ Gender | ▪ EEO-1 category |
| ▪ Race/ethnicity | ▪ Job Group |
| ▪ Hire date | ▪ Compensation* |

*Compensation now includes base salary/wage rate; hours worked in a typical workweek; and other compensation/adjustments to salary (such as bonuses, incentives, commissions, merit increases, locality pay or overtime). These should be identified separately for each employee. Also requested is any additional information on factors used to determine compensation such as education, past experience, locations, performance, and level/band/range/grade. In addition, OFCCP is looking for documentation and policies explaining the contractor's compensation system. Furthermore, OFCCP is now requiring this data to be submitted electronically, if it's maintained in that format.

- Item 20 is new and requests copies of reasonable accommodation (RA) policies, and documentation of any reasonable accommodation requests. Interestingly, an RA policy is not required by the regulations, but is merely recommended as a best practice.
- Item 21 is new and requests the most recent assessment of your personnel processes as required by Section 503 and VEVRAA, including date of the assessment, any actions taken as a result, and date of the next scheduled assessment.
- Item 22 is new and requests the most recent assessment of physical and mental qualifications as required by Section 503 and VEVRAA including date of the assessment, any actions taken as a result, and date of the next scheduled assessment.

This revised scheduling letter is a game changer. The OFCCP has simply gone directly to requiring the submission of all the detailed data that may/may not have been requested at various stages of the desk audit depending on whether there were indicators of any problems.

The data requested will allow the Agency to conduct adverse impact analysis by minority subgroups as well as conducting "most favored" analyses. The compensation data request will allow the Agency to go directly to a multiple regression analysis depending on the default and contractor specified factors affecting pay.

Knowing that this data will be required, contractors must ask themselves the following questions:

- What do I have?
- How long will it take to gather the data upon request?
- What don't I have?
- What will it take to find that data if it's available?

We will continue to keep you apprised of developments as they occur.

WEBINAR

Due to the significance of this new scheduling letter and itemized listing, and the implications created for contractors, Douglas B. Brown & Associates, LLC will be hosting a webinar on Thursday, October 9, 2014 from 1:30 – 3:00 p.m. (EST) More details including how to register will be forthcoming shortly.

If there are any questions or comments concerning anything contained above, they can be directed to this office by calling us at 440-564-7987 or sending an email to dbb@dbbrown.com. The discussion of this matter is for the clients and friends of Douglas B. Brown & Associates, LLC and does not represent nor is intended as a substitute for professional legal advice.