

Action Steps For Gov't Contractors On The OFCCP Audit List

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On Jan. 20, the Office of Federal Contract Compliance Programs published a list of 500 contractor establishments scheduled to receive advance audit notices known as corporate scheduling announcement letters, or CSALs.[1]

CSALs are courtesy letters that the OFCCP sends to federal contractors and subcontractors to alert them that one or more of their establishments will likely be scheduled for an OFCCP audit in the coming months. Contractors receiving CSALs are typically scheduled for audits, so they provide a good opportunity for contractors on the CSAL list to check their practices to make sure they are prepared for an audit.

Once the scheduling letter is received, contractors will only have 30 days to provide the information requested in the OFCCP's current scheduling letter. As discussed further below, contractors on the CSAL list should immediately start reviewing the current scheduling letter to ensure they are prepared to submit the data and documents at the outset of the audit.[2]

Those contractors should also be mindful that the OFCCP has proposed significant changes to the scheduling letter that expand the documents and data contractors will be required to submit.[3] If approved, the proposed scheduling letter will increase the burden and risk for contractors during audits.

It will be prudent for contractors on the CSAL list to review the proposed scheduling letter to ensure they are adequately prepared to submit the items in that letter since the OFCCP might wait to send a new version of the scheduling letter that could be approved in the coming months.

According to the methodology released by the OFCCP, the CSAL list includes contractors that did not certify on the OFCCP's contractor portal by Dec. 1, 2022, that they have a current affirmative action plan in place, although there appear to be some contractors on the CSAL list that completed the certification before that deadline.[4]

The 2023 CSAL list includes a total of 500 contractor establishments scheduled for audits, which includes 452 traditional establishment-based compliance evaluations, 24 compliance evaluations of functional affirmative action plans and 24 corporate management compliance evaluations of corporate headquarters.



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In prior years, CSALs have ranged from 2,500 to 5,000 establishments. The 2023 CSAL list may include fewer establishments than usual to allow the OFCCP to evaluate contractors more thoroughly with limited resources.

Action Items for Contractors on the CSAL List

Contractors on the CSAL list should promptly begin preparing for a potential audit. Below are some proactive steps to consider.

Be aware that a potential audit may have a shorter timeline.

Historically, the OFCCP sent CSALs to service and supply contractors as a courtesy to let them know that one or more of their establishments may be scheduled for an OFCCP audit and give them at least 45 days' advance notice to prepare for the compliance review. The OFCCP changed its policies last year to allow contractors to be scheduled for an audit immediately after the CSAL list has been published.

Although landing on the audit list does not necessarily mean that a contractor's establishment will be audited, contractors on that list are typically scheduled for an OFCCP audit.

Notify relevant staff to watch for CSALs or scheduling letters.

CSALs and scheduling letters are typically sent to the human resources director — or designated point of contact — at the establishment on the OFCCP's audit list.

As these individuals are not always responsible for the contractor's affirmative action compliance — or even aware of the contractor's affirmative action obligations — contractors should notify HR personnel and other designated points of contact at their establishments to keep a lookout for those notices in the next few weeks.

Prepare for a potential audit now.

Contractors on the audit list should take advantage of the advance notice by immediately reviewing their affirmative action practices in preparation for a potential audit. This administration recently made several significant changes, showing that it intends to conduct more aggressive and less transparent audits.[5]

Investing ample time up front to have a good initial submission can potentially save significant costs in defending an audit, and might avoid unnecessary adverse findings.

The review should generally begin with determining which type of compliance review will be conducted — i.e., establishment review, corporate management compliance evaluation, or functional affirmative action plan review — and then contractors should use the OFCCP scheduling letter as a guide for preparing the initial submission.[6]

It is critical to closely review any materials and data that will be submitted to the OFCCP to ensure they are accurate and compliant.

It is also important to note that the OFCCP has a pending proposal for a new scheduling letter.[7] The

proposed scheduling letter significantly expands the documents and data contractors will be required to submit at the outset of the audit, and increases the burden and risk for contractors during audits.

The proposed scheduling letter was subject to public comments until Jan. 20. Approval by the Office of Management and Budget is also required.

We expect any finalized changes to the proposed scheduling letter to be implemented after the current OFCCP scheduling letter expires on April 30.

It is possible that the OFCCP will not schedule some audits on the CSAL list until after the proposed scheduling letter becomes final. So, it would be prudent for contractors on the CSAL list to review the proposed scheduling letter to ensure they are adequately prepared to submit the materials and data required by that scheduling letter.

Pay close attention to areas showing adverse impact, especially hiring and compensation.

The OFCCP has been effective in its pursuit and settlement of systemic discrimination cases in the last few years. In many instances, the best defense to these claims is having a good offense.

If a contractor has potential indicators of discrimination in its hiring, promotions, terminations or compensation, it should immediately analyze those areas, pursuant to the attorney-client privilege, to ensure that the data and similarly situated employee groupings underlying those indicators are accurate or that the contractor has legitimate explanations for those indicators.

Ensure you can document privilege for pay equity studies.

The OFCCP issued a directive last year indicating that it will be asking contractors to provide copies of their pay studies required by the OFCCP's regulations.[8]

If contractors claim those studies are privileged, the OFCCP will require contractors to show that their studies were conducted pursuant to the attorney-client privilege.[9]

Do not expect extensions for responding to the scheduling letter.

Contractors have 30 days from the date they receive a scheduling letter to provide the OFCCP with the items requested in the itemized listing attached to the scheduling letter, which usually includes a request for a copy of the contractor's affirmative action programs for the establishments under review.

Under the current administration, unless there are extraordinary circumstances, the OFCCP will not extend the deadline for the initial submission.

Remember to certify that affirmative action programs have been completed.

Under a new rule, contractors that are required to create and maintain affirmative action programs must certify to the OFCCP that they have created and are maintaining a current program in compliance with the laws enforced by the OFCCP. The certification must be completed annually.[10]

Last year, contractors were required to provide this certification on or before June 30, 2022, using the

OFCCP's contractor portal.[11] The OFCCP has not yet announced this year's certification deadline for contractors, but we anticipate that the deadline will be on or around June 30.

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[1] <https://www.dol.gov/agencies/ofccp/scheduling-list>.

[2] <https://www.dol.gov/agencies/ofccp/scheduling-list>.

[3] <https://www.regulations.gov/document/OFCCP-2022-0004-0001>.

[4] <https://www.dol.gov/agencies/ofccp/scheduling/Methodologies>.

[5] <https://elc.mofo.com/topics/OFCCP-Signals-Return-to-More-Aggressive-and-Less-Transparent-Audits.html>.

[6] <https://www.dol.gov/agencies/ofccp/manual/fccm/figures-1-6/figure-f-3-combined-scheduling-letter-and-itemized-listing>.

[7] <https://www.regulations.gov/document/OFCCP-2022-0004-0001>.

[8] <https://elc.mofo.com/topics/OFCCP-Signals-Return-to-More-Aggressive-and-Less-Transparent-Audits.html>.

[9] <https://elc.mofo.com/topics/ofccps-revised-directive-softens-on-seeking-privileged-pay-analysis>.

[10] <https://elc.mofo.com/topics/Ready-Set-Certify--OFCCP-Releases-Mandatory-Annual-AAP-Certifications.html>.

[11] <https://www.dol.gov/agencies/ofccp/contractorportal>.