OFCCP Likely to Issue New Pay Equity Guidance in 2012, Sends Second Notice to OMB to Rescind 2006 Compensation Guidelines

How can we know what the standards for pay equity compliance are, if OFCCP doesn’t tell us? OFCCP seems to be heeding that message from the contractor community and has taken a step toward providing new guidance for compensation evaluations.


In the first Notice, OFCCP did not propose a replacement for the 2006 guidelines. Many of the comments to the first Notice were highly critical of the Agency’s plan to abandon the old guidelines without proposing a new compensation assessment procedure. Although the content of the second Notice has not been released, recent comments by OFCCP Director Patricia A. Shiu suggest that OFCCP’s second Notice includes a proposal for new compensation guidelines to replace the 2006 guidelines.

In a recent interview with Bloomberg BNA, Director Shiu said that the “overwhelming response to that [first Notice] was: please do not rescind this without providing something in its place. We heard that loud and clear. And I think it’s a reasonable request.” In terms of possible approaches for evaluating potential pay discrimination, Shiu noted that given the complexities of pay analyses, “there’s just no one cookie-cutter approach.” Shiu also added that EO 11246 follows Title VII of the 1964 Civil Rights Act precedent, under which “there is no one approach nor could there be.”

The OMB must review and approve the second Notice before it is published in the Federal Register. OMB can take up to 90 days to conclude its review, which is expected to be around April or May of 2012.

What This Means For Contractors

For the federal contractor and subcontractor community, there continues to be uncertainty surrounding current compliance standards that will be used in reviewing compensation during OFCCP audits. The contractor community will have to wait at least weeks, maybe months, to see if OFCCP took contractor comments to heart in proposing new compensation guidelines. It is an open question how much the OFCCP will de-emphasize multiple regression analysis as a standard for analyzing pay,
and if so, what methodology or methodologies may be suggested. Once OFCCP publishes the second Notice in the Federal Register, the public will have the opportunity to comment on any proposed new compensation guidelines. Until further information is available, multiple regression remains a good practice for many employers who wish to review pay equity, particularly those with larger work forces, even outside the context of OFCCP compliance. Contractors should consult with their legal counsel to discuss the best approaches for pay equity analysis generally and for OFCCP compliance purposes.

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