

Pre-enforcement Notice and Conciliation Procedures Crosswalk: 2020 Rule v. 2023 Rule

Regulation	2020 Rule	2023 Rule
<p>Definitions 60-1.3, 60-300.2, and 60-741.2</p>	<ul style="list-style-type: none"> • Added definitions for: <ul style="list-style-type: none"> ○ “Director” ○ “Qualitative evidence” ○ “Quantitative evidence” • Removed definition for “Deputy Assistant Secretary” 	<ul style="list-style-type: none"> • Removes definitions for: <ul style="list-style-type: none"> ○ “Qualitative evidence” ○ “Quantitative evidence” • Retains definition for “Director” and removal of “Deputy Assistant Secretary”
<p>Reasonable Efforts Standard 60-1.20(b), 60-300.60(b), and 60-741.60(b)</p>	<ul style="list-style-type: none"> • No changes made in 2020 rule. 	<ul style="list-style-type: none"> • Clarifies the “reasonable efforts” standard that OFCCP must satisfy when attempting to secure compliance through conciliation, to make clear that OFCCP’s conciliation standards align with Title VII.
<p>Use of PDN and NOV 60-1.33, 60-300.62, and 60-741.62</p>	<ul style="list-style-type: none"> • Codified OFCCP’s use of the Predetermination Notice and Notice of Violation. • Permitted OFCCP to issue a Predetermination Notice or Notice of Violation only with approval from the OFCCP Director or acting agency head. 	<ul style="list-style-type: none"> • Retains the codification of the Predetermination Notice and Notice of Violation in cases with preliminary findings of potential discrimination. • Clarifies OFCCP’s use of the Predetermination Notice and the Notice of Violation as pre-enforcement procedures and restores the distinct purposes of each notice. • Removes the requirement that OFCCP obtain approval from the OFCCP Director or acting agency head prior to issuing a Predetermination Notice or Notice of Violation. However, as part of its current procedures, the national office will continue to review the PDNs prior to issuance.
<p>PDN Response Period 60-1.33, 60-300.62, and 60-741.62</p>	<ul style="list-style-type: none"> • Extended the time for a contractor to submit a response to a Predetermination Notice from 15 calendar days to 30 calendar days. 	<ul style="list-style-type: none"> • Returns to the 15-calendar day response period in place prior to the 2020 rule, with extensions for good cause.

<p>Expedited Conciliation</p> <p>60-1.33, 60-300.62, and 60-741.62</p>	<ul style="list-style-type: none"> • Codified the expedited conciliation option, which permits OFCCP to enter directly into a conciliation agreement if the contractor wishes to bypass the notice procedures. 	<ul style="list-style-type: none"> • Retains the expedited conciliation option with general edits to improve procedural efficacy and to clarify OFCCP’s role in the expedited conciliation process.
<p>Evidentiary Standards</p> <p>60-1.33, 60-300.62, and 60-741.62</p>	<ul style="list-style-type: none"> • Established the evidentiary standards OFCCP must meet under each legal theory of discrimination in order to issue a Predetermination Notice or Notice of Violation. The standards for the two notices were the same. • Prescribed that OFCCP could only issue a Predetermination Notice or Notice of Violation if it provided certain quantitative evidence and qualitative evidence, with only limited exceptions. • Required OFCCP to demonstrate practical significance in order to issue a Predetermination Notice or Notice of Violation. • Required that OFCCP disclose the quantitative and qualitative evidence relied on by OFCCP in “sufficient detail to allow contractors to investigate allegations and meaningfully respond.” • Required OFCCP provide, upon contractor request, the model and variables used in any statistical analysis and an explanation for why any variable proposed by the contractor was excluded from that analysis. • Required OFCCP address all relevant concerns and defenses raised by the contractor in response to the Predetermination Notice in the Notice of Violation. 	<ul style="list-style-type: none"> • Rescinds the evidentiary standards and other requirements that were necessary to issue a Predetermination Notice or Notice of Violation, replacing them with a more streamlined, effective, and flexible pre-enforcement and conciliation process consistent with Title VII of the Civil Rights Act of 1964.

<p>Additional Violations</p> <p>60-1.33, 60-300.62, and 60-741.62</p>	<ul style="list-style-type: none"> • Not addressed in 2020 rule. 	<ul style="list-style-type: none"> • Where OFCCP finds additional violations later in an investigation, the final rule allows OFCCP to identify additional violations and include such violations in a subsequent Notice of Violation or Show Cause Notice without amending the Predetermination Notice or Notice of Violation. Contractors will have an opportunity to respond to and conciliate any additional violations.
<p>Show Cause Notice</p> <p>60-1.33, 60-300.62, and 60-741.62</p>	<ul style="list-style-type: none"> • No changes made in 2020 rule. 	<ul style="list-style-type: none"> • Codifies that OFCCP may issue a Show Cause Notice without first issuing a Predetermination Notice or Notice of Violation when the contractor has failed to provide access to its premises for an on-site review or refused to provide access to witnesses, records, or other information.
<p>Severability Clauses</p> <p>60-1.48, 60-2.36, 60-4.10, 60-20.9, 60-30.38, 60-40.9, 60-50.6, 60-300.85, and 60-741.84</p>	<ul style="list-style-type: none"> • Added severability clauses that applied only to the provisions on resolution procedures. 	<ul style="list-style-type: none"> • Deletes the severability clauses that applied only to the resolution procedures and replaces them with severability clauses covering the entirety of each part of OFCCP's regulatory scheme.