

NWX-DOL ESA OFCCP

**Coordinator: Sherry West
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2:00 pm ET**

Operator: Welcome and thank you for standing by. At this time all participants are in a listen only mode for the duration of today's conference. I would also like to inform all parties that today's conference is being recorded and if you have any objections you may disconnect at this time.

Now I would like to turn the conference over to your host, Ms. Sherry West. Thank you ma'am. You may begin.

Sherry West: Thank you, operator. Yes, I'm Sherry West. I'm with the Office of Federal Contract Compliance Programs and we want to welcome all of you to today's Webinar especially for people who have functional affirmative-action programs.

And this is the functional affirmative-action program directive changes Webinar. So we welcome you and, as you know, we also have a second Webinar tomorrow that's for all contractors who want to know more about functional affirmative-action programs, or FAAPs, as we call them.

So before I turn it over to our presenter, I want to cover a few housekeeping chores with you. The phone will be muted throughout the presentation but we want to keep you involved and we want you to submit your questions or comments through our chat feature on the Webinar.

If you look to the right of your screen, you'll see a place that says chat. If it's not open, you can click on the diamond shape and it will open up. Down at the bottom is a box where you can enter in your question or your comment and please, when you do so, direct it to all panelists so of us can see it.

And send it in and we will try to get to it today, if at all possible. If you need a closed captioning, please click on that media link there to the right also at the bottom of your screen and you'll see a spot where you can access this tool.

So, I encourage you - we will not be taking questions and answers at the end of this so we're not opening up the phone lines so if you have burning questions, please, please submit them in the chat for us and we will attempt to answer them.

At the end of the presentation, we'll take about a three-minute break where we'll review the questions and comments that you've entered and then we'll come back on the line and answer the questions.

So we will not have open phone lines so, please, enter your questions into the chat. Now, let me introduce you to today's speaker - speakers. First we have (Nakesha Pugh), who is branch chief for the functional affirmative action program branch here at OFCCP.

And (Nakesha) has been in this capacity for four years. And prior to that, she served five years as a senior compliance officer and the former Washington, DC district office.

We also have (Kathy Trailer). She has worked with OFCCP for six years. And prior to joining us, (Kathy) worked in the private industry providing diversity, inclusion and equal employment opportunity solutions to federal contractors. I want to welcome you both. And I'm going to turn out Webinar over now to (Nakesha). (Nakesha).

(Nakesha Pugh): Okay, thank you, Sherry, and hello everyone. Good afternoon. This is (Nakesha Pugh) from the FAAP branch. I hope you are doing well today and I just want to thank you all for joining us for this Webinar.

We are extremely pleased to announce that OFCCP received approval from the Office of Management and Budget, OMB, to collect information outlined in the (FAAP) directive.

And we just wanted to take this opportunity to highlight some of the key changes in the directive for our FAAP - contractors who have approved FAAP agreements.

And we also want to thank you all for your patience as we have worked through this renewal process. During our Webinar today, we're going to cover background about the functional affirmative-action program and how the program is administered.

We'll highlight the key changes in its revised directives and the steps necessary to maintain a FAAP agreement. As we go through the Webinar,

again, please feel free to place your questions in chat and we will address them at the end.

(Kathy Trailer): (Nakesha), when did OFCCP first implement FAAP and what guidance has OFCCP issued (since) implementing the FAAP program?

(Nakesha Pugh): Okay, OFCCP issued the final rule authorizing the use of functional affirmative-action programs, or FAAPs, as we like to refer to them, on November 13th of 2000.

The final rule provides that contractors may develop their AAPs around a business function or line of business without consideration of the geographic location of the establishments or employees.

The regulation, at 41CFR 60.2.1D4, provides that contractors who desire to establish an affirmative action program, other than by establishment, may reach agreement with OFCCP to develop and use AAPs based on functional or business units.

After issuing the final rule and updating its regulations, OFCCP issued directive 254 on March 21, 2002. And this directive established the procedures for approving contractor requests for agreements to use FAAPs.

The guidance was later rescinded and directive 201301 was issued on December 12, 2012. The current directive revises directive 2013 01 and was effective as of April 28, 2016.

(Kathy Trailer): (Nakesha), thank you for that background on FAAP. Can you please explain how OFCCP administers the FAAP program and the role that each office plays in FAAP?

(Nakesha Pugh): Okay, I think I can do that. OFCCP's FAAP branch is responsible for administering the FAAP program. The branch is comprised of myself, the branch chief and a team of senior compliance officers.

Where located in OFCCP's Division of Program Operations at the national office in Washington, DC. The branch has primary responsibility for overseeing the FAAP program, negotiating and maintaining FAAP agreements, sending FAAP scheduling letters and coordinating FAAP evaluations with our regional and field offices.

Currently the FAAP branch sends all FAAP scheduling letters and our regional and field offices are responsible for conducting the compliance evaluations.

Upon receipt of a scheduling letter, FAAP contractors submit the requested functional AAP and supporting documentation to the regional office identified in the scheduling letter. The regional and field offices are responsible for conducting evaluations and on-sites if necessary.

(Kathy Trailer): (Nakesha), I was excited to see that OMB approved the revised FAAP directive and I read over the revised version that was posted to the Web site but I still have questions regarding the changes that were made. Can you please go over those changes?

(Nakesha Pugh): Well, certainly. (Kathy), the first change in the revised directive focuses on the contract information that is provided when requesting a FAAP agreement. The prior directive required that contractors submit a copy of a qualifying federal contract with their application.

This requirement has changed and contractors are now only required to provide contract information for at least one federal contract. Contractors must provide the name of the contracting agency, the dollar amount of the contract, the contract period, and if they are a subcontractor, the name of the prime contractor.

This information should also be updated during the annual update or three years certification if the previously provided contract information has expired. We also changed the timeframe for submitting annual updates to the FAAP agreement.

The annual updates are now due at least 30 days prior to the effective date of the AAP year. For example, if a company's AAPs operate on a calendar year; annual updates to the agreement must be submitted no later than December 2.

(Kathy Trailer): This sounds like an important change because now the FAAP agreements will coincide with the contractor's AAP year. How about the modification process? Did OFCCP make any changes there?

(Nakesha Pugh): Yes. We updated the timeframe for submitting modification requests as well. The prior directive required that significant changes such as mergers and acquisitions be reported within 60 days of the change. This timeframe has been updated. And this information is now required at least 60 days prior to the implementation of the change.

For example, a merger may take place on January 1st; however, the changes to the AAP structure may not be implemented until June 1st. In this scenario, the modification request must be received no later than April 1, indicating how the changes will impact the company's AAP structure.

(Kathy Trailer): Okay, (Nakesha), as I went through the directive, I noticed that there was no mention of a process for renewing FAAP agreements. Will OFCCP renew FAAP agreements when they expire?

(Nakesha Pugh): Yes, we will. The revised directive does provide a provision for contractors who wish to continue developing FAAPs upon the expiration of their FAAP agreement.

In lieu of having a renewal process, the revised directive implements a three-year certification. The agreements will continue to be issued for a three-year period and contractors will be required to certify in writing that they continue to operate under a functional structure.

And they will only need to submit information for those units that have either been added or deleted. We also updated the directive and removed a provision that contractors undergo at least two compliance evaluations during the three-year term of the agreement. The directive now only requires that contractors undergo at least one compliance evaluation during the term of their agreement.

(Kathy Trailer): Okay, (Nakesha), I want to recap. The revised directive includes changes to the contract information that is submitted when applying for a FAAP. It updates the timeframes for submitting annual updates and requesting modifications, it implements a three-year certification in the place of the renewal. Are those the only changes to the revised directive?

(Nakesha Pugh): (Kathy), there's one last change that I want to highlight and it focuses on the employee location information that is included in the FAAP agreement. To ensure that we have complete information on the facilities covered within each functional unit, the revised directive requires that contractors provide

detailed information concerning the locations of employees covered in each functional unit.

The prior guidance only required that contractors provide city and state information for their employees. However, the revised guidance requires that the contractor provide, for each functional unit, the company or subsidiary name, street address, total number of employees and name and address of managing officials and contact persons.

(Kathy Trailer): Let me see if I understand correctly. The contractor is required to send an annual update at least 30 days prior to the start of the AAP year. This annual update provides a record of current names of functional units, managing officials, contact persons, employee counts and addresses.

However, if a contractor has added or removed functional units, these actions will be processed as a modification. And modifications are required when there are significant changes such as reorganizations, mergers, acquisitions, that investors and/or downsizing. All requests for modifications must be submitted no later than 60 days after the effective date of the changes.

(Nakesha Pugh): Yes, that is correct. You seem to have a pretty good understanding of the annual update and modification. Do you want to go over the certification process to make sure that you have a clear understanding of that?

(Kathy Trailer): Sure. When you covered the certification process, I believe you stated that the revised directive replaces the three-year renewal with a three-year certification. The certification request must be submitted at least 120 days prior to the expiration of the current agreement and must include a written statement from the contractor confirming the elements that comprise its FAAP.

The contractor is also required to submit documentation concerning new or eliminated functional units including the reason for those changes. The contractor is required to submit an updated record of employee counts, addresses, managing officials, contact persons and updated contact information if the previously provided contracts have expired.

Also, all agreements that are certified will be reissued for another three-year term. But if a contractor fails to certify their current agreement, the agreement will expire at the end of the three-year term.

(Nakesha Pugh): That's it. I think you now understand the annual update, the modification in the certification.

(Kathy Trailer): Great. But, (Nakesha), can you explain the termination process? Is that still the same?

(Nakesha Pugh): Yes, the process for terminating FAAP agreements remains unchanged. An agreement can be terminated by the contractor or OFCCP may terminate an agreement with 90 days written notice. When terminating an agreement, the terminating party must provide a brief explanation of the reason for termination.

Most terminations are the result of organizational changes within the company or company buyouts by non-FAAP contractors. If the company is bought out by a non-FAAP contractor, that new company would have to submit a request if they desire to develop FAAPs. (Kathy), do you have any other questions about the FAAP directive?

(Kathy Trailer): No, I think you've answered everything.

(Nakesha Pugh): Okay, well, great. Thank you again, everyone, for participating in this Webinar today. And the purpose, again, was just to provide an overview of the key changes in the revised directive.

We hope that this information has been helpful to you, but if you have any additional questions, please know that you can always contact us at the FAAP branch and we can assist you with your concerns or questions.

Sherry West: Thank you, (Nakesha) and (Kathy). That was great. Short and sweet but a lot of information. Operator, are you there?

Operator: Yes ma'am.

Sherry West: Okay. Everyone, we're going to take a quick three minute break and then we'll be back to answer any questions that you have submitted during this Webinar. So don't go away. We'll be back in exactly three minutes. Thank you.

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