

NWX-DOL ESA OFCCP

**Moderator: Sherry West
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1:00 pm CT**

Coordinator: Welcome and thank you for standing by.

At this time all participants will be on listen only until the question-and-answer - I apologize, at this time all participants will be on listen only.

This conference is being recorded. If you have any objections, you may disconnect at this time. I'd now like to turn the meeting over to your host, Miss (Brenda Stewart). Ma'am, you may begin.

(Brenda Stewart): Thank you, operator. And welcome everyone. I'm glad you're able to join us for today's webinar. Our topic is OFCCP's Functional Affirmative Action Program, and the purpose today is to provide you with information regarding the FAAP, to discuss the FAAP application process, and to give information to you on how you should be maintaining the FAAP agreement once approved by the OFCCP director.

So during this webinar we want you to be able to submit your questions. Some of you have already submitted questions on your registration form, but you can also submit questions through the chat box while we're going through the

presentation. As you're doing that, we have people that are pulling the questions and preparing responses for it, but be mindful that we might not be able to get to all questions but they will be used. I can rest assure you we will be using them as appropriate for future guidance. We also use them to develop frequently asked questions that will be posted on OFCCP's website.

So use the chat box that's located to the lower right-hand side of your screen. Click on the diamond next to the word chat, and when you submit your questions please make sure you send them to all panelists. You can also note that close captioning is available on the bottom right-hand side of your screen under the Media Viewer.

Okay. Now I'd like to introduce our speakers. So today we have Nakisha Pugh who is the branch chief of the Functional Affirmative Action Program branch, and Jerry Pitts, a senior compliance officer in the branch of Functional Affirmative Action Program.

And instead of saying functional affirmative action programs over and over again, we will just call them FAAP for shorthand. Nakisha's been in the capacity of branch chief for four years. Before coming to the FAAP branch as a senior compliance officer back in 2007, she spent five years as a compliance officer in the former Washington, D.C. district office. She holds a B.S. degree in psychology from Morgan State University. Welcome, Nakisha.

Nakisha Pugh: Thank you, (Brenda).

(Brenda Stewart): Now Jerry is also here, Jerry Pitts. And she joined us at branch in 2007 also as a senior compliance officer. And before coming to DOL, Jerry served in various affirmative action, diversity, and EEO roles in the defense contractor community. She also serves as an instructor for the U.S. Air Force

International Officers Academic Instructor School and the Air Force Civilian Personnel Management School. She has prior government experience with EEOC as an EEOC enforcement investigator and the Department of Housing and Urban Development as a fair housing enforcement investigator. Jerry is a graduate of Webster University with a master's degree in HR management and technology services. Welcome, Jerry.

Jerry Pitts: Thank you.

(Brenda Stewart): So now I will be turning the presentation over to Nakisha.

Nakisha Pugh: Okay. Thank you, (Brenda). And good afternoon again everyone and welcome to today's webinar on functional affirmative action programs, or FAAP, as we like to refer to them. My name again is Nakisha Pugh and I am the branch chief for OFCCP's branch of functional affirmative action programs.

OFCCP is excited to announce the extension of the information collection contained in the revised FAAP directive. The information collection was approved by OMB on April 28, 2016 and is effective through April 30, 2019. The revised directive outlines the procedures for applying for and maintaining FAAP agreements.

During today's webinar, we're going to provide some information regarding the background of FAAP, provide an overview of functional affirmative action programs and functional affirmative action program agreements, the advantages of maintaining FAAPs, discuss the application and approval process for FAAP agreements and the process for maintaining FAAP agreements.

Again, as we proceed through today's session, we ask that you put your questions through chat and we will address them prior to closing out.

Jerry Pitts: Nakisha thank you for this presentation. Can you please provide an overview of the background of FAAP?

Nakisha Pugh: Okay. OFCCP issued the final rule authorizing the use of functional affirmative action programs on November 13 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 establishment or employees.

The regulation at 41CFR 60-2.1 (d)(4) provides that contractors who desire to establish an affirmative action program other than by establishment may reach agreement with the OFCCP director to develop and use affirmative action programs based on functional or business units. Contractors must have the approval of the OFCCP director prior to implementing FAAPs.

Subsequent to the issuance of the final rule, OFCCP issued directive 254 on March 21, 2002. And this directive established the procedures for approving contractor requests for agreements to use FAAPs. This guidance was later rescinded and replaced by directive 2013 01 that was issued on December 12, 2012. The current directive revises directive 2013 01 and was effective as of April 28, 2016.

Jerry Pitts: Thank you for that background. Now can you explain how OFCCP administers the FAAP program?

Nakisha Pugh: Okay. OFCCP's FAAP branch is responsible for administering the FAAP program. The branch is comprised of the branch chief and a team of senior

compliance officers. The branch is located in OFCCP's Division of Program Operations at its national office in Washington, D.C. The branch has primary responsibility for overseeing the FAAP program, negotiating and managing FAAP agreements, sending FAAP scheduling letters, and coordinating FAAP evaluations with our regional and field offices.

Currently the FAAP branch sends the scheduling letter for all FAAP evaluations and our regional and field offices are responsible for conducting the compliance evaluation. Upon receipt of the 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 then responsible for conducting the evaluations and onsite if necessary.

Jerry Pitts: Okay, Nakisha. Let's see, the FAAP program was first authorized in 2000 and the FAAP branch has primary responsibility for overseeing the FAAP program. I think I understand that but I need some clarity on exactly what a FAAP is. Can you help me with this?

Nakisha Pugh: Okay. A FAAP, or functional affirmative action program, is a written strategic plan based on functional or business units. Rather than covering a specific facility or establishment, a FAAP covers an entire functional or business unit regardless of the location of the employee. A functional or business unit is a component within a business representing a specific function such as sales or IT.

The functional AAP is designed to promote equal employment opportunity. Similar to establishment-based AAPs FAAPs must contain all AAP elements as prescribed by 41 CFR 60-2. Some of these required elements include an

organizational display or workforce analysis, job group analysis, and an availability analysis.

Jerry Pitts: Are there any advantages to developing FAAPs?

Nakisha Pugh: There definitely are. There are many advantages for maintaining functional AAPs. Functional AAPs can allow contractors to align their AAPs with how their businesses operate and assign accountability to the appropriate officials. Some contractors have found that when the AAP is based on the employees that are located at the same establishment, they have difficulty identifying the official responsible for making decisions regarding these employee or the employees adhere to different policies because they work for different lines of business.

Functional AAPs also help contractors tailor their affirmative action and outreach efforts to meet the specific needs of the function or business unit. And another benefit is that contractors with approved FAAP agreements have an OFCCP staff member who is assigned as their agreement manager, and this agreement manager will work with the agreement and is also available to answer questions regarding AAP development.

Jerry Pitts: I think I now know what a FAAP is and the advantages of developing them, but I also heard you mention a FAAP agreement. Can you explain what that is?

Nakisha Pugh: The FAAP agreement is an agreement between OFCCP and a federal contractor or subcontractor to develop, implement, and maintain functional AAPs. The agreement requires the written approval of the OFCCP director and is issued for a three-year period. Contractors with approved FAAP

agreements must undergo at least one compliance evaluation during the three-year term of their FAAP agreement.

Contractors seeking approval to enter into a FAAP agreement must ensure that all employees are either covered by a functional or business unit or an establishment-based AAP. While some contractors find it beneficial to establish all of their AAPs based on functional or business units, others find it beneficial to establish a combination of both functional and establishment-based AAPs.

Jerry Pitts: Now that I know what a FAAP is, can you help me understand how I could structure my current establishment-based AAPs into a functional structure?

Nakisha Pugh: That will be my pleasure. But before we get there, can you explain to me how your company is currently structured?

Jerry Pitts: Well my company, Acme Products, has locations in Dallas, Texas; Seattle, Washington; Denver, Colorado; and Washington, D.C. and we maintain establishment-based AAPs for each of these locations. The employees within each of these locations perform a variety of functions and report to different functions in the organization that have different personnel practices.

For example in Denver, Colorado, they have employees reporting into engineering, production, and sales lines of business. Employees in each of these business report to different managers and adhere to different personnel practices. Acme Products also notices that employees who report to the engineering business are also located in Washington, D.C.

Nakisha Pugh: Well, Jerry, with the information you have provided, you may have some options. Without having all the details, I want to provide an example of how your FAAPs might be organized.

To ensure that the AAPs align with the way Acme Products conducts its business and to assign accountability to the appropriate individuals within the company, Acme Products could request a FAAP agreement covering four functional units. The units could include corporate, which will cover all employees who report into corporate such as finance and human resources. There would also be functional units covering the sales unit, the engineering unit, and the production unit. Within each of these functional AAPs, Acme Products would cover all of the employees reporting to the functional unit regardless of their physical location.

Jerry Pitts: So what are my other options?

Nakisha Pugh: Well, Jerry, I think I saw in your chart that Acme Products has a research and development facility in Seattle, Washington where the top official is responsible for all employees at that location. If this is true, Acme Products could request to maintain a combination of both establishment-based AAPs and functional AAPs. The employees reporting to corporate, sales, engineering, and production would be covered by functional AAPs. And the employees at the Seattle, Washington location will be covered by an establishment-based AAP.

Jerry Pitts: Nakisha, this is so exciting. I think my company is going to request a FAAP. Can you talk me through that process?

Nakisha Pugh: Well once a contractor has determined that it would be appropriate to develop its AAPs along functional or business lines, a written request must be

submitted to the OFCCP director explaining why they believe it would be appropriate to develop functional AAPs. The written request must be submitted no later than 120 days prior to the expiration of its current corporate headquarters' AAP or within 120 days from the award of a federal contract if they are a first time contractor.

Jerry Pitts: Will that affect my ongoing compliance evaluations?

Nakisha Pugh: The submission of a request for a FAAP agreement does not affect ongoing compliance evaluations, and these evaluations will continue as establishment-based evaluations.

Jerry Pitts: So I will submit my written request to the OFCCP director, and according to the revised directive I need to submit, one, a statement that the contractor is a covered federal contractor and information concerning at least one federal contract to include name of contracted agency, contract number, amount of contract, term of the contract, and name of the prime contractor if you are a subcontractor.

Two, a copy of the most recent consolidated EEO1 report. Three, an organizational chart. The organizational chart should show how the proposed functional units are related to the company's overall structure. Four, a description of each proposed functional unit, including company or subsidiary name, street address, total number of employees, and names and addresses of managing officials. And five, if the contractor is proposing to maintain establishment-based and functional AAPs, they must also provide the locations and EEO1 numbers for the establishment that will maintain establishment-based AAPs.

Nakisha Pugh: Yes, Jerry, I think you have it.

Jerry Pitts: So what happens after a contractor submits a request for a FAAP agreement?

Nakisha Pugh: When OFCCP receives a request for a FAAP agreement, the agency will review the application package and determine if the package contains all of the required application materials. If the package is incomplete, the contractor will be notified regarding the missing items. OFCCP will not initiate the approval process until a complete package is received. Once OFCCP receives a complete package, the materials will be reviewed to gain an understanding of how the company is structured and operates.

A FAAP team member is assigned to work with the contractor's representative during the negotiation process. The FAAP team member will discuss the application materials to gain clarity concerning the company's structure and whether a FAAP is appropriate. If necessary, OFCCP may schedule a conference to discuss the application package. These meetings generally occur via teleconference.

When recommending approval, the agreement is drafted for the OFCCP director's review and approval. Once approved, the agreement will be forwarded to the contractor for signature. The contractor returns the signed agreement to the OFCCP Director, who will then sign the agreement. The agreement then becomes effective upon the director's final signature.

Jerry Pitts: After the agreement is approved, what do I need to do to maintain my agreement? I can recall reading about an annual update or modification and certification in the directive. Can you explain this to me, please?

Nakisha Pugh: Contractors with approved FAAP agreements are required to ensure that their agreements remain up to date. To meet this requirement, contractors are

required to submit an annual update and when necessary request that their agreements be modified based on organizational changes. The annual update must be submitted at least 30 days prior to the effective date of its AAP year.

The purpose of the annual update is to update information concerning names of functional units, names of managing officials and contact person, addresses, employee counts, and employee location information. If the contractor has added or removed functional units, the request will be processed as a modification.

Jerry Pitts: Well what happens if there's a merger or an acquisition?

Nakisha Pugh: Great question. When significant changes are made to the company's structure such as mergers, acquisitions, reorganizations, or downsizing that result in the addition or elimination of functional units, the contractor should request that the agreement be modified.

OFCCP must be notified of such significant changes within 60 days of the effective date of the changes. The contractor must provide detailed information concerning the events that led to the change, information concerning the new or removed functional units, names and addresses of managing officials and contact persons, and updated employee count information. If functional units are being removed, the contractor must explain how those employees will be covered if they remain with the company.

Jerry Pitts: Do the FAAP agreements expire?

Nakisha Pugh: FAAP agreements are issued for a three-year term. At the end of the three-year term, contractors can request in writing at least 120 days prior to the expiration of their FAAP agreement that their agreement be certified for

another three-year term. This written notification must include a statement from the contractor specifying that they continue to operate under a functional structure.

If the contractor determines that they continue to operate under a functional structure, however, they need to remove or add functional units not included in their current agreement, they must provide a written explanation of the changes. The contractor is also required to update information concerning names and addresses of managing officials and contact persons, employee counts, and location information and, if necessary, contract information.

Upon verifying that the contractor continues to operate under a functional structure, the agreement will be drafted and presented to the OFCCP director. Upon approval, the agreement will be forwarded to the contractor for a signature. And again the agreement will become effective upon the final signature of the OFCCP director.

Jerry Pitts: One last question, Nakisha. After I get an approved agreement does that agreement exist forever or can I terminate it if necessary?

Nakisha Pugh: Well, Jerry, we hope that you don't have to terminate your functional affirmative action program agreement but OFCCP understands that businesses are fluid and changes do occur. So a provision is included in the directive that states that a FAAP agreement can be terminated either by OFCCP or the contractor. A FAAP agreement can be terminated with 90 days written notice from either party.

Common reasons for termination include the company no longer holds federal contracts, the company no longer operates under a functional structure, or the company was purchased by a company that does not develop FAAPs. And if

this is the case, that new company would have to submit a request for a FAAP if they want to develop functional affirmative action programs.

Jerry, do you have any other questions about FAAP?

Jerry Pitts: No.

Nakisha Pugh: Okay. Well I hope you all enjoyed today's webinar on OFCCP's FAAP programs and the procedures for applying for and maintaining FAAP agreements. The purpose of this webinar was to provide an overview of the program, and if you still have additional questions after today, feel free to contact the FAAP branch at the e-mail or telephone number listed on this slide and we would be more than happy to help you.

(Brenda Stewart): Thank you Nakisha and thank you Jerry. A lot of information and a lot of feedback that has been coming through chat. So what we're going to right now is take a very brief three-minute break. That will allow us time to poll the questions that you guys have been submitting through chat as well as through the registration so that we can start to go over the responses to your questions. So we're going to mute the phone three minutes. Stay tuned. Don't go anywhere. We'll be right back. Operator?

Coordinator: Yes we'll go ahead and take care of that. Thank you.

(Brenda Stewart): Thank you.

Coordinator: Your line is open again.

(Brenda Stewart): Thank you. Welcome back everyone. Thank you for your patience while we review the questions that have been coming in, quite a few. So I'm going to

turn it back over to Jerry and Nakisha and they'll be asking the questions that you submitted and providing responses.

Jerry Pitts: We have one question. "Are contractors required to have a FAAP?"

Nakisha Pugh: FAAPs are strictly voluntary. They are optional in our regulations, and contractors are not required to develop FAAPs. However, the establishment AAP if they fall under our jurisdiction they must develop those.

Jerry Pitts: Let's see, I think I have another question. "Are FAAP evaluations any different by the OFCCP?"

Nakisha Pugh: FAAP evaluations follow the same procedures as our establishment-based evaluations. We adhere to the federal contractor compliance manual or OFCCP's compliance manual, and it is available on our website.

Jerry Pitts: Let's see if I have another question here. Let's see. "Is there a typical profile for federal contractors using FAAPs?"

Nakisha Pugh: Jerry, not really. We find that our contractors with FAAP agreements have various profiles covering various different industries. It's really not based on what you do but it's based on how you conduct your business.

Jerry Pitts: What, if any, new requirements are there for employers under existing functional AAPs for their next renewals?

Nakisha Pugh: Okay. The revised directive really did not add any new requirements; however, it did modify some of the requirements. And some of those modifications include the timeframes for submitting annual updates and modifications. We are asking for quite a bit more information regarding

employee locations, and we did change the contract provision that is submitted when contractors are seeking approval for a FAAP. When they're seeking approval, the prior directive requested that we actually get a copy of a federal contract, now we're just requesting contract information for at least one.

Jerry Pitts: Let's see if we have some more here.

(Brenda Stewart): Have you got questions - still some questions you're going to review?

Nakisha Pugh: Okay. And I'm just going to go back over some of the changes again because I know I went over that a little quickly. Some of those changes include the contract information being submitted with a FAAP application. We no longer require that you submit an actual copy of a contract; however, we request that you submit contract information for at least one federal contract. For those contracts, we want to know the contracting agency, the term of the contract, the dollar amount of the contract, and, if you happen to be a subcontractor, the name of the prime contractor.

We updated the guidelines for submitting annual updates. We now require that those updates be submitted prior to the implementation of your AAP year. In the former directive, those annual updates were due on the anniversary of your agreement. Regarding the modifications, those are now due 60 days prior to implementing the changes. And so that gives you a little more time to assess how those changes will be wrote into your existing structure.

Jerry Pitts: Is there a typical profile for federal contractors using FAAPs?

Nakisha Pugh: No. Again, there isn't a typical profile for FAAP contractors. It really just depends on how you operate and how you conduct your business.

Jerry Pitts: Let's see. We have a question here. "What has changed or been added or deleted?"

Nakisha Pugh: We did not delete any provisions from the directive.

Jerry Pitts: If you miss the 120-day deadline for renewal of your FAAP, an example is it expires 90 days from now, what should your next step be?

Nakisha Pugh: I would suggest you give us a call. The directive requires that those renewals requests be submitted at least 120 days prior to your agreement expiring, but give us a call regarding that.

(Brenda Stewart): Still reviewing questions. Stay tuned. Any other questions?

Jerry Pitts: We're still looking at your questions. If I submitted a request to review my FAAP agreement prior to the April 28, 2016 issuance of the revised FAAP directive, do I have to adhere to the revised guidance?

Nakisha Pugh: Contractors who requested to renew a FAAP agreement prior to the issuance of the directive should adhere to the previous directive.

Jerry Pitts: If a contractor is undergoing a desk audit can they apply for a FAAP? What impact does this have on the desk review?

Nakisha Pugh: Contractors who are undergoing a desk audit can submit an application for a FAAP agreement, and the submission of a request does not impact those reviews at all. Those reviews will continue as establishment-based evaluations.

(Brenda Stewart): We still have some questions left.

Jerry Pitts: Is the previous directive still available online?

Nakisha Pugh: No that directive - it was rescinded so it is not available.

(Brenda Stewart): While you are reviewing for the last couple of questions I just want to take a brief moment to respond to a question that we've gotten quite a bit asking about the - whether the presentation is available. And the presentation is not available for printing or downloading but you can access the webinar recording on OFCCP's website www.dol.gov/ofccp. If you go to Webinar Archives, we have it - we will have the recording from today's session posted and that will be what you see on your screen in addition to the audio that you're hearing. So you will be able to see the slides that were presented today.

Jerry Pitts: I think I see another one here. If you are a bank, could you have a functional AAP for all the branches and another AAP for everything else?

Nakisha Pugh: Well financial institutions can request a FAAP agreement and have actually been approved for FAAP agreements. The particular structure of that FAAP agreement is really going to depend on how you operate. So that's something that we could discuss.

(Brenda Stewart): Any other questions? We have one last question, okay.

Jerry Pitts: Here's one. "If I am approved for a FAAP agreement, what do I have to - when do I have to implement my FAAPs?"

Nakisha Pugh: Okay. Once contractors are approved for a FAAP agreement, they are required to have their FAAPs implemented within 120 days of the effective

date of the agreement. And they are required to notify OFCCP once they have implemented those AAPs.

(Brenda Stewart): Okay. That was our last question. A lot of questions came through, a lot of good information went out. Thank you, Nakisha and Jerry.

What we're about to show you now -- no don't close current -- we want to show you on OFCCP's website where we have the Functional Affirmative Action Program page so that you can see where we're going to be posting the frequently asked questions and other information related to FAAPs. And you would just go go to the Internet -- www.dol.gov/ofccp, and at the very you will see Functional Affirmative Action Program.

Sorry guys. Return. Go to the bottom of that page. Bring up Functional Affirmative Action Program, FAAP, and that's where you can get additional information, get - reference material. And you also have the contact information for the branch if you need to send any questions.

So that is it for today. Thank you very much for your participation, and stay tuned to OFCCP's website. On the homepage we'll be posting the recording there, or a link will be posted there that will take you to the recording for today's session. Thank you everyone. Have a great day.

Coordinator: That concludes today's conference. Thank you for participating. You may now disconnect.

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