



## DIRECTIVE (DIR) 2019-01

**A Directive (DIR) is intended to provide guidance to OFCCP staff or federal contractors on enforcement and compliance policy or procedures. A DIR does not change the laws and regulations governing OFCCP's programs and does not establish any legally enforceable rights or obligations.**

**Effective Date:** November 30, 2018

1. **SUBJECT:** Compliance Review Procedures (rescinds DIR 2011-01)
2. **PURPOSE:** To provide notice that OFCCP will conduct compliance reviews in accordance with the Federal Contract Compliance Manual and recent directives, and is rescinding DIR 2011-01, *Active Case Enforcement (ACE) Procedures*.
3. **REFERENCES:**
  - a. DIR 2011-01, Active Case Enforcement (ACE) Procedures (referenced as Transmittal No. 295 and ADM Notice/Other) (Dec.16, 2010).
  - b. Federal Contract Compliance Manual (FCCM) (Oct. 2014).
  - c. 41 CFR Chapter 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Revised as of July 1, 2018).
  - d. DIR 2018-01, Use of Predetermination Notices (PDN) (Feb. 27, 2018).
  - e. DIR 2018-04, Focused reviews of contractor compliance with Executive Order 11246 (E.O.), as amended; Section 503 of the Rehabilitation Act of 1973 (Section 503), as amended; and Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended (Aug. 10, 2018).
  - f. DIR 2018-05, Analysis of Contractor Compensation Practices During a Compliance Evaluation (Aug. 24, 2018).
  - g. DIR 2018-07, Affirmative Action Program Verification Initiative (Aug. 24, 2018).
  - h. DIR 2018-08, Transparency in Compliance Activities (Sept. 19, 2018).
4. **AFFECTED POLICY:** This directive rescinds DIR 2011-01.
5. **BACKGROUND:** OFCCP administers and enforces three equal employment opportunity laws: Executive Order 11246, as amended (Executive Order); Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503); and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (VEVRAA). Collectively, these laws make it illegal for contractors and

subcontractors doing business with the federal government to discriminate in employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, disability or status as a protected veteran. In addition, contractors and subcontractors are prohibited from discriminating against applicants or employees because they inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations.

In December 2010, OFCCP issued DIR 2011-01, outlining Active Case Enforcement (ACE) procedures for Supply and Service (S&S) compliance evaluations. Primarily, the ACE procedures replaced the former Active Case Management (ACM) procedures, which focused enforcement efforts on cases with indicators of systemic discrimination under the Executive Order, through abbreviated and generally shorter desk audits. ACE required full OFCCP desk audits under all three legal authorities. As a quality control measure, the ACE directive increased the frequency of a mandatory onsite review, from every 50th scheduled contractor establishment to every 25th establishment. Under the ACE procedures, OFCCP has identified and remedied a high rate of affirmative action violations under the Executive Order, Section 503 and VEVRAA. OFCCP also has remedied systemic discrimination in a variety of industries and across a variety of employment practices. However, the number of OFCCP compliance reviews gradually declined and overall processing time increased under ACE.

Since OFCCP issued DIR 2011-01, the agency has embedded valuable components of ACE and the prior ACM into its standard operating policies and procedures and updated the FCCM in August 2014 to incorporate the full desk audit procedures and closure letter templates. In 2017, OFCCP began posting its S&S scheduling list methodology on its website and reinforced this policy in DIR 2018-08, Transparency in OFCCP Compliance Activities. In posting the methodology, OFCCP now proactively discloses how it neutrally selects contractor establishments for a compliance evaluation, including the frequency of mandatory onsite reviews for quality control purposes. DIR 2018-08 also established procedures to shorten the time to complete a full desk audit and encouraged a collaborative approach during conciliation to resolve issues more quickly. OFCCP is further extending its quality control efforts to monitor compliance through AAP verification and compliance checks as outlined in DIR 2018-07, Affirmative Action Program Verification Initiative. In DIR 2018-04, OFCCP committed to comprehensively ensuring compliance with equal employment opportunity and non-discrimination obligations under all three of OFCCP legal authorities and all of the protections in the Executive Order through neutrally scheduled focused reviews. By increasing the number of compliance evaluations, shortening desk audits and conciliating issues more efficiently, OFCCP is maximizing its resources by proceeding with the most effective aspects of ACM and ACE.

Therefore, there is no longer the need for the ACE directive as a freestanding guidance document.

- 6. ROLES AND RESPONSIBILITIES:** OFCCP staff is responsible for following the compliance evaluation procedures set forth in the FCCM and other agency guidance, such as recent directives on transparency (DIR 2018-08), compensation analysis (DIR 2018-05), use of PDNs (DIR 2018-01), and focused reviews (DIR 2018-04).

7. **POLICY:** OFCCP rescinds DIR 2011-01.

OFCCP staff must continue to follow compliance evaluation procedures described in the FCCM and supplemental agency guidance, policies and procedures, including the following:

- OFCCP will publish its scheduling methodology in OFCCP's Freedom of Information Act (FOIA) Library.
- Contractor establishments that have undergone a compliance evaluation will be exempt from another neutrally scheduled compliance evaluation, for 24 months from the date of closure of the compliance evaluation or the date OFCCP accepts a final progress report, unless a different exemption period pursuant to other OFCCP policies and/or programs is provided and agreed to by OFCCP and the contractor.
- While onsite, OFCCP may evaluate all aspects of contractor compliance under its three programs, limiting onsite reviews to the nature or scope of the indicators or concerns that triggered the onsite review.
- The Compliance Officer should always try to work with the contractor to obtain proactive corrections to deficiencies at the desk audit when it identifies non-material violations with no additional indicators of discrimination.

8. **INTERPRETATION:** This Directive does not create new legal rights or requirements or change current legal rights or requirements for contractors. EO 11246, Section 503, VEVRAA, OFCCP's regulations at 41 CFR Chapter 60, and applicable case law are the official sources for contractors' compliance responsibilities. Nothing in this Directive is intended to change otherwise applicable laws, regulations or other guidance or to restrict or limit OFCCP's ability to perform compliance reviews, request data, or pursue enforcement of any issue within its jurisdiction. This Directive is not intended to have any effect on pending litigation, nor would this Directive have altered the agency's basis for litigating any pending cases. The intent of this Directive is to provide greater clarity regarding the manner in which OFCCP has and will continue to conduct compliance reviews.

9. **ATTACHMENTS:** None.



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