



DIRECTIVE (DIR) 2019-03

**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:** Opinion Letters and Help Desk
2. **PURPOSE:** To provide additional compliance assistance and guidance regarding OFCCP’s laws and regulations in a manner that employees and employers can easily access and reasonably rely upon, as they seek to understand their rights and obligations under the law.
3. **REFERENCES:**
  - a. Executive Order 11246 of Sept. 24, 1965, Equal Employment Opportunity, as amended (EO 11246).
  - b. Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503).
  - c. Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (VEVRAA).
  - d. Implementing regulations for EO 11246, Section 503, and VEVRAA, 41 CFR part 60.
  - e. Federal Contract Compliance Manual (FCCM) (Oct. 2014).
  - f. DIR 2018-05, Analysis of Contractor Compensation Practices During a Compliance Evaluation (Aug. 24, 2018).
  - g. DIR 2018-08, Transparency in OFCCP Compliance Activities (Sept. 19, 2018).
4. **AFFECTED POLICY:** The procedures described in this directive supersede any procedures in the FCCM or other previously issued guidance to the extent they could be read to conflict.
5. **BACKGROUND:** OFCCP enforces EO 11246, Section 503, and VEVRAA. Collectively, these laws prohibit federal contractors and subcontractors from discriminating on the basis of race, color, religion, sex, sexual orientation, gender

identity, national origin, disability or status as a protected veteran.<sup>1</sup> They also require federal contractors to take affirmative steps to ensure equal employment opportunity in their employment processes. Contractors also 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.

OFCCP currently has jurisdiction over an estimated 120,000 contractor establishments and approximately 24,000 firms or parent companies. Based on the size of the contractor population and other factors, OFCCP schedules only a portion of these establishments annually for compliance evaluations. Therefore, as a careful steward of taxpayer resources, OFCCP always seeks to ensure contractors have sufficient, practical, and timely compliance assistance resources to understand and fully meet equal employment opportunity obligations. Additionally, OFCCP also seeks to enhance the information available to employees of contractors concerning the contractors' obligations.

OFCCP achieves its mission through both enforcement actions and compliance assistance. As part of its compliance assistance efforts, OFCCP provides a Help Desk that allows OFCCP stakeholders (i.e., contractors, their employees and job applicants, and the public) to ask questions by phone or email. Help Desk staff then provide technical assistance to stakeholders in response to these questions. If OFCCP receives certain questions repeatedly, it may convert them into Frequently Asked Questions (FAQs) and post them on its website along with the answers. The Help Desk is a popular compliance assistance tool, with OFCCP receiving 2,664 inquiries in the first three quarters of FY 2018 alone.

OFCCP desires to enhance its Help Desk by making certain Help Desk inquiries and responses dynamically available and searchable as a self-service option on OFCCP's website. This self-service option would allow stakeholders to benefit from other stakeholders inquiries, for greater efficiencies in OFCCP Help Desk operations over time.

In addition, OFCCP can provide fact-specific guidance, in the form of Opinion Letters to employers and employees, as applicable. Fact-specific guidance about OFCCP's jurisdictional coverage or application of guidance can provide more certainty about how OFCCP exercises its regulatory authority. Other agencies within DOL have long incorporated the use of Opinion Letters as part of their guidance to the public. OFCCP seeks to provide a parallel process. This provides clarity regarding certain statutory or regulatory provisions to all those affected by the provision. Such letters could relate to an individual contractor, an industry, a category of contractors, all contractors as well as a particular category of employees such as Protected Veterans. Fact-specific guidance that contractors can reasonably rely upon will reduce uncertainty in unusual circumstances and help contractors ensure and maintain their compliance.

OFCCP generally will accept direct requests for Opinion Letters from both employers and employees. However, OFCCP also would monitor its Help Desk inquiries and seek to publish certain fact-specific inquiries as anonymous Opinion Letters, upon consent of the employer or employee. As a matter of prosecutorial discretion, OFCCP also would

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<sup>1</sup> Hereinafter, the terms "contractor" and "federal contractor" are used to refer to contractors and subcontractors with direct federal contracts and/or federally assisted construction contracts, unless otherwise expressly stated.

consider whether a contractor acted consistently with an Opinion Letter, Directive, FAQ or Help Desk answer when determining whether to cite a violation for related actions.

**6. ROLES AND RESPONSIBILITIES:**

- a. Regional and Field Staff: It is the responsibility of regional and field staff to refer stakeholders to the Help Desk, or the process for requesting opinion letters, as applicable.
- b. National Office: It is the responsibility of OFCCP's national office staff to implement the following policies and procedures regarding the Help Desk and Opinion Letters and to ensure the Office of the Solicitor reviews all publicly posted documents to ensure consistency with OFCCP laws and regulations, as necessary and appropriate.

**7. POLICY AND PROCEDURES:** OFCCP staff is directed to implement the following policies and procedures regarding the Help Desk and Opinion Letters.

- Develop a dynamic and searchable publically available source of Help Desk questions and answers while preserving the anonymity of requestors, consistent with applicable law and agency record keeping requirements.
- Establish a process for issuing Opinion Letters that provide guidance on the application of OFCCP regulations to fact-specific situations that follow the criteria in this directive.
- Opinion Letters do not change the laws and regulations governing OFCCP's programs and do not establish any legally enforceable rights or obligations.
- Opinion Letters should not be used to provide legal advice or to resolve questions that are the subject of ongoing or expected litigation.
- The Office of the Solicitor must review Opinion Letters prior to publication to ensure consistency with OFCCP laws and regulations.
- OFCCP should not provide Opinion Letters to a contractor during the pendency of a compliance evaluation of that contractor's establishment.
- OFCCP will use its discretion in referring and responding to an inquiry through OFCCP's Help Desk or other means of providing compliance assistance such as FAQs.
- In collaboration with OFCCP regional management and the Office of the Solicitor, consider whether a contractor has acted consistently and in good faith with an Opinion Letter, Directive, FAQ, Help Desk answer, or other OFCCP guidance in determining whether to proceed with an enforcement recommendation in a given matter.

- Develop a public outreach and education campaign to encourage all stakeholders, including contractors and their employees and applicants, to contact the Help Desk and access Opinion Letters.

8. **INTERPRETATION:** This Directive does not create new legal rights or requirements or change current legal rights or requirements for contractors. Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 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 a) provide options to obtain greater clarity regarding the compliance review process, which will allow contractors to perform self-audits and come into compliance in advance of compliance review or enforcement matter; and b) allow applicants and employees of covered contractors to increase their understanding of the contractors' obligations in the areas of equal employment opportunity and nondiscrimination.



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