

Mid-Year OFCCP Update:

What Can Employers Expect As The Election Draws Near?

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Introduction

DISCLAIMER

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Meet Berkshire

1

OVER 35 YEARS

For over 35 years we have helped this nation's most recognizable federal contractors with OFCCP and EEOC regulatory requirements

2

INDUSTRY LEADERS

Berkshire experts present at national and local industry events and conferences

3

SPECIALIZATION

We specialize in affirmative action compliance, pay equity, and talent acquisition

4

RESOURCES

Berkshire offers informative webinars and articles to keep AA/EEO leaders abreast of how regulatory requirements impact their company

Presentation Overview

- OFCCP Leadership Changes
- OFCCP's Top Priorities for 2020
- Lessons Learned from Focused Reviews
- Compliance Review Trends
- Key Takeaways



Changes in Leadership



Business Company

123 Corporate Drive
Melbourne, VIC 3000
Tel: 03 1234 5678
Fax: 03 1234 5679

Customer Support: LTD
180 1234 5678
Tel: 1800 1234 5678
Fax: 1800 1234 5679

INVOICE

Date: 15/05/2016
Invoice No: 0000001
Customer ID: 212

Category	2015	2016	% Growth
Product A	107,812	108,287	+0.4%
Product B	125,819	125,819	+0%
Product C	89,910	91,930	+2.2%
Product D	123,930	125,819	+1.5%
Product E	189,128	278,161	+47.1%
Total	47,029	107,812	+229.1%

2020 Changes in OFCCP Leadership

- February 2020: OFCCP Director Craig Leen nominated to serve as Inspector General at OPM
- Patricia Davidson joins as Career Deputy Director
- Other OFCCP Leadership Changes:
 - Melissa Spear - Acting Director of Enforcement
 - Bob LaJeunesse – Acting Deputy Director of Enforcement and Branch Chief of Expert Services
 - Margaret Kraak now Acting Deputy Director of DPO
 - Williams Crews now Acting Branch Chief for FAAPs
 - Nakisha Pugh – former FAAP Branch Chief now at ODEP
 - August 2019: Marcus Stergio hired as Ombudsman



OFCCP's Top Priorities for 2020

WHAT YOU NEED TO KNOW



Business Company
123 Corporate Center
100 Pennsylvania Avenue
New York, NY 10001
Tel: 212-555-1234
Fax: 212-555-5678
Email: info@business.com

INVOICE

Date: 1/15/2020
Invoice No: 0000001
Customer ID: 123

Product	2015	2016	%Growth
Product A	107,812	108,287	+1%
Product B	89,910	91,938	+2%
Product C	123,938	125,819	+1%
Product D	189,128	278,161	+47%
Product E	47,029	107,812	+129%

FY20 OFCCP Activity

- Impact of COVID-19 on OFCCP operations
- All regions now using updated Case Management System
- Pace of audits from March 2019 Scheduling List has been much slower than expected
 - No audits from November 2019 Scheduling List have been scheduled

FY20 OFCCP Activity

- 6 financial and 22 non-financial conciliation agreements posted on OFCCP website for FY 2020
 - 4 hiring discrimination cases
 - 1 ERCA for hiring discrimination
 - 1 ERCA for pay discrimination
 - Various technical violations

FY20 OFCCP Priorities

- Finalizing revisions to Scheduling Letters and Itemized Listings
- Finalizing revisions to Disability Self-Identification Form
- Finalizing religious exemption NPRM
- Town Hall Action Plan

FY20 OFCCP Priorities

- More efficient compliance reviews, with desk audit completion in 45 days or less
- Institutionalizing current practices
 - Updates to FCCM in late December 2019
 - Finalizing NPRM to codify current resolution procedures and add expedited conciliation option

Anticipated 2020 OFCCP Activity

- New CSAL list to be released in early Summer?
- Contractor verification/certification program?
- Promotion Focused Reviews? Other types of Focused Reviews?
- Promised further guidance on compensation discrimination evaluations

Lessons Learned from Focused Reviews

The background image shows a person's hands reviewing documents on a desk. A laptop is visible in the upper right. The documents include:

- Company's Growth:** A line graph showing sales trends over time.
- Business Company:** A document with contact information for Customer Support LTD.
- INVOICE:** A document with fields for Date, Invoice No, and Customer ID.
- Table:** A table with columns for 2015, 2016, and %Growth.

	2015	2016	%Growth
Product A	108,287	107,812	-1%
Product B	91,938	91,938	+1%
Product C	125,819	125,819	+4%
Product D	278,161	278,161	+5%
Product E	11,827	11,827	+10%
Total	47,029	107,812	

Product B - North America
Product A - Australia
Product C - Europe

OFCCP Section 503 Focused Reviews

- Huge learning curve for OFCCP
- Most onsite reviews have been 1-2 days
- Helpful to tell a robust story about your efforts to recruit and retain individuals with disabilities

OFCCP Section 503 Focused Reviews

- Areas of Focus
 - Voluntary Self-Identification Process
 - Employee Resurvey and “Response rates”
 - Recruitment and application process
 - Outreach Assessment and number of referrals
 - Accommodation process
 - FMLA, leave and disability process
 - Flexible workplace and parental leave policies
 - Employee resource groups
 - Best practices that can be shared with other federal contractors

Compliance Review Trends

Company's Growth

It is a process to allow an organization to focus resources on the greatest opportunities to increase sales and achieve the company's target. Marketing strategy's goal is to increase sales and achieve the advantage over other competitors. It includes your own and long-term activities of marketing that you can use to the advantage of your company's structure and contribute to its objectives. The objectives will be based on how you gain sales by acquiring and retaining customers.

Opportunities to increase sales and achieve the company's target.

Category	2015	2016	2017	2018
Consumer & Devices	107.812	108.287	107.812	107.812
Electronics	108.287	108.287	108.287	108.287
Software & Services	108.287	108.287	108.287	108.287
Home Living	108.287	108.287	108.287	108.287
Auto Products	108.287	108.287	108.287	108.287
Others	108.287	108.287	108.287	108.287

Business Company

Customer account LTD
100 Pennsylvania Avenue
Washington, DC 20540
Tel: 202-555-1234

INVOICE

Date: 12/31/2018
Invoice No: 0000001
Customer ID: 123

	2015	2016	%Growth
Product A	108.287	108.287	+1%
Product B	91.938	91.938	+1%
Product C	125.819	125.819	+4%
Product D	278.161	278.161	+1%
Product E	11.827	11.827	+1%

	2015	2016
Product B - North America	8.714	39.912
Product A - Australia	107.812	108.287
Product A - Europe	89.910	91.938
Product A - Asia	123.938	125.819
Product A - Africa	189.128	278.161
Product A - South America	47.029	107.812

Compliance Review Trends

- Requesting an extension of time
- Submitting update data
- Focus on workforce analysis
- Section 503 and VEVRAA Compliance in all reviews, not just focused reviews

Compliance Review Trends

- More transparency than prior reviews, but contractors often have to ask
- Application of practical significant testing to OFCCP analysis
- Treatment of personnel activity preliminary indicators
- Continued aggregation of employees into large pay analysis groups
 - AAP Job Groups, EEO-1 Categories
 - 10 to 1 and Rule of 5

Key Takeaways

- Plan to develop timely annual and update AAPs
- Expect compliance reviews to (hopefully) move faster
- Continued use of the Early Resolution Procedures
- OFCCP will continue to focus on Section 503 and VEVRAA Compliance



Key Takeaways

- Focus on compensation will continue
 - Aggregation of data into larger pay analysis groups
- Focus on wrapping up regulatory proposals before November 2020
- And..... this could all change because it is an election year





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