

CLIENT ALERT

OFCCP Issues New Directive on Functional Affirmative Action Programs for Public Comment

June 15, 2022

On Friday, May 27, the Office of Federal Contract Compliance Programs (OFCCP) issued for public comment a new proposed Directive to encourage the use of, and establish policies and procedures relating to, Functional Affirmative Action Programs (FAAPs). The FAAP program allows covered federal contractors and subcontractors (collectively, Contractors) to organize their affirmative action programs (AAPs) according to functional business units, rather than by physical establishments. Under both the prior Directive and the new proposed Directive, Contractors have the flexibility to combine the use of FAAPs and establishment-based AAPs, if the OFCCP grants approval for such a structure.

The recently-published Directive would implement several revisions to existing FAAP guidance. These revisions include the following:

- At least once per year, Contractors must notify the OFCCP whether there have been any changes to the primary corporate contact and the management official of each functional unit.
- The proposed Directive removes the restriction requiring that the OFCCP use the submitted information only for the purposes of considering the application.
- Unlike the existing Directive, the proposed Directive does not require the functional unit to operate autonomously. This is a meaningful and useful change for Contractors considering the FAAP option.
- Under the proposed Directive, Contractors must provide updated information on a contract of \$150,000 or more, if it is a party to one, whereas the existing Directive only requires Contractors to provide information on a contract of \$50,000 or more.
- Contractors are required to submit data regarding the functional unit in MS Excel or CSV format. This data must include the name, address, and email address of the managing official of each unit.

The OFCCP is seeking public comment on the Directive until June 27, 2022, after which time the Directive will be sent to the Office of Management and Budget (OMB) for review. The current Directive is set to expire on June 30, 2022, but may be extended if the OMB does not reach its decision prior to that date.

Contractors who have enacted, or are considering, FAAPs should review the new Directive and, if desired, submit comments. If the Directive is approved, Contractors operating under a FAAP agreement or considering moving to FAAPs should ensure that their programs align with the new requirements.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Kris D. Meade

Partner – Washington, D.C.

Phone: +1.202.624.2854

Email: kmeade@crowell.com

Rebecca L. Springer

Partner – Washington, D.C.

Phone: +1.202.624.2569

Email: rspringer@crowell.com

Katie Aber

Associate – Washington, D.C.

Phone: +1.202.624.2779

Email: kaber@crowell.com