

Reproduced with permission from Corporate Accountability Report, 21 CARE, 2/2/16. Copyright © 2016 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

Compliance Programs

OFCCP Aims to Boost Coordinated Enforcement Efforts, Attorney Says

In 2016, federal contractors can expect to see increasing coordination within the Office of Federal Contract Compliance Programs' district and regional offices in sharing information from compliance audits, a management-side attorney told participants during a Jan. 14 webinar sponsored by the law firm Crowell & Moring.

"The agency has taken an aggressive stand on the type and amount of data it expects to receive during a compliance audit," said Rebecca Springer, who practices labor and employment law with the firm.

Expect Broader Geographical Scrutiny. Compliance officers are coordinating information requests and sharing the data among various regional offices, she added.

For example, "a compliance officer might request a conference call with the contractor's human resources representative. But you discover, once you get on the call, that compliance officers from five of your open audits are also on the line," Springer said.

The OFCCP's coordination on audits "emphasizes the importance of contractors adopting a coordinated approach to an audit and an awareness of how any particular issue at one establishment within an audit can impact the broader [compliance] landscape for you," Springer said.

In addition, the agency continues to "set unreasonable deadlines" for responding to a request during an audit, according to Springer. She cited an example of an agency's document request seeking personnel files for 8,000 employees within seven days.

Revisit Confidentiality Language. Pay equity is also driving the federal regulatory agenda under the OFCCP's new pay transparency rule, which took effect Jan. 11, Springer said during the webinar.

Under the final rule, contractors are prohibited from discriminating against any employee or job applicant who inquires about or discloses either his or her compensation or the compensation of any other employee or job applicant. Contractors also are required to include government-mandated language in their employee policies that identifies this right and the prohibited discrimination.

Springer said that the new rule "creates a difficult conflict between an employee's right to disclose compensation and an employer's interest in keeping such information confidential in the marketplace." She

urged contractors that require their employees to sign confidentiality or non-disclosure agreements to consider whether they need to revise their definition of "confidential information" in light of the new rule.

Peter J. Eyre, a partner at the law firm, moderated the 90-minute webinar, which included presentations by 26 Crowell & Moring attorneys discussing the regulatory environment in which contractors will be operating this year.

More Regulations, Enforcement Awaits. There's "more of a groundswell from federal contractors about the frustration and costs" associated with government regulations and enforcement, compared to previous years, said Angela B. Styles, a partner and co-chair of the firm's government contracts group. "Contractors are feeling over-regulated and are starting to feel more comfortable about voicing their concerns," she added.

Styles anticipates that federal contractors will continue to work together over the next couple of years to educate lawmakers and the government about the high regulatory cost of doing business with the government, its economic burden on taxpayers and its effect on contractors rendering their services.

"On the political side, it really seems to be a calm election season from a government contracting perspective, unlike other presidential years," Styles said. "You are not seeing the issue of contracting fraud in the forefront [of presidential debates and race], which I think is good news," for federal contractors, she added.

The other good news, according to Styles, is that the budget sequestration limits have been lifted, so federal contractors are no longer under the same funding constraints that they were subjected to during the last several years. "On the less positive side, you are going to see more regulations and an increase in enforcement and investigation," Styles added.

For example, the Fair Pay and Safe Workplaces executive order requires federal contractors to disclose violations arising from 14 federal wage and hour, discrimination, health and safety, family and medical leave, labor and other workplace laws. There will probably be a legal challenge to the regulations implementing the final rule to Executive Order 13673, said Steve McBrady, a partner in the firm's Washington, D.C. office. The regulations, which are slated for release in April, will clarify specific obligations, he added.

Still, "there are big concerns with how to process a huge amount of labor compliance data" on a contract-by-contract basis that may involve numerous subcontractors, McBrady said. He advised contractors to design a plan on how they intend to collect and disclose

labor violations over a three-year period on contracts subject to the final rule.

BY LYDELL C. BRIDGEFORD

To contact the reporter on this story: Lydell C. Bridgford in Washington at lbridgeford@bna.com

To contact the editor responsible for this story: Heather Bodell at hbodell@bna.com