



HR and Benefits Update



OFCCP to Apply Special Procedures, Heightened Scrutiny to Equal Employment Practices of Government Contractors, Subcontractors on ARRA Funded Projects

July 21, 2009

U.S. businesses engaged to provide services on projects funded from the \$787 billion of stimulus funding provided under the American Recovery and Reinvestment Act of 2009 (ARRA) signed into law by President Barack Obama in February, 2009 will face heightened equal employment opportunity scrutiny and be subject to special procedures by the Office of Federal Contract Compliance Programs (OFCCP) according to "Procedures for Scheduling and Conducting Compliance Evaluations of American Recovery and Reinvestment Act of 2009 (ARRA) Funded Contractors" issued July 7, 2009.

Businesses providing services or supplies on ARRA funded projects directly or as subcontractors will be considered government contractors, required to comply with the equal employment opportunity requirements of [Executive Order 11246, as amended](#) (EO 11246); [Section 503 of the Rehabilitation Act of 1973, as amended](#) (Section 503); and the [Vietnam Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212](#) (VEVRAA). OFCCP has made clear that it will conduct compliance evaluations and host compliance assistance events to ensure that federal contractors comply and are aware of their responsibilities under EO 11246, Section 503 and VEVRAA.

A review of the ARRA Procedures makes clear that ARRA funded contractors can expect to face much more rigorous scrutiny during their compliance audits that normally applies in non-ARRA contract compliance reviews.

OFCCP has established separate scheduling procedures to provide for compliance evaluations of ARRA funded contractors separate from those usually applicable to government contractors because ARRA obligates OFCCP separately to track its ARRA-related and non-ARRA-related enforcement activities.

The ARRA Procedures require that Regional, District and Area offices conduct a full compliance evaluation, including a full desk audit and onsite review, of every ARRA funded contractor establishment scheduled, even in the absence of systemic discrimination indicators. Normally applied by OFCCP to non-ARRA government contract reviews, Active Case Management (ACM) procedures normally allow OFCCP to conduct only an abbreviated desk audit in the absence of systematic discrimination indicators in non-ARRA compliance evaluations. These ACM procedures will not be used in ARRA compliance evaluations.

Due to the special nature of ARRA, OFCCP also has indicated that the ARRA compliance evaluations will not apply the following scheduling exceptions typically applicable in non-ARRA contract compliance reviews:

- No more than 25 establishments per contractor exception: Presently, for contractors with multiple establishments, the Federal Contractor Scheduling System (FCSS) limits the

number of compliance evaluations scheduled to 25 new evaluations during a scheduling cycle. The 25-establishment limit does not apply to ARRA compliance evaluations.

- Two year exception: Presently, contractor establishments that have been reviewed by OFCCP are excepted from further review for a 24-month period. Under ARRA scheduling procedures, ARRA funded contractor establishments may be eligible for an ARRA compliance evaluation even if they have been reviewed within the previous 24 months. However, pre-award clearance is not required for contractor establishments reviewed by OFCCP within the past 24 months.

However, ARRA scheduling procedures will apply the following scheduling exceptions:

- ARRA funded contractor establishments that have undergone an FCSS compliance evaluation will be excepted from scheduling and review under ARRA procedures for six months from the date of the FCSS case closure.
- ARRA funded contractor establishments that have undergone an ARRA compliance evaluation will not be subject to another ARRA evaluation.
- ARRA funded contractor establishments that have undergone an ARRA evaluation will also be excepted from scheduling for a standard OFCCP compliance evaluation, pursuant to FCSS, for 24 months from the date of closure of the ARRA compliance evaluation.

ARRA funded contractors also are subject to other special pre-award clearance, pre-award intake, pre-award classification and other special procedures. The ARRA Procedures also set for special requirements particularly applicable to construction contracts funded by ARRA.

The special procedures and heightened compliance review procedures provided for under the ARRA Procedures indicate that government contractors or subcontractors providing services or supplies on projects funded with ARRA funds will want to place special attention on compliance with OFCCP and other federal equal employment opportunity and other employment regulation compliance.

Curran Tomko Tarski LLP Attorneys Can Help

If your business needs assistance auditing, updating or defending its human resources, corporate ethics, and compliance practices, or responding to employment related or other charges or suits, please contact Curran Tomko Tarski LLP Labor and Employment Practice Chair, Cynthia Marcotte Stamer, at cstamer@cttlegal.com, (214) 270-2402, or your favorite Curran Tomko Tarski LLP attorney.

The author of this article, Curran Tomko Tarski LLP Labor and Employment Practice Group Chair, Cynthia Marcotte Stamer, and other members of Curran Tomko Tarski LLP are experienced with assisting employers and others about compliance with federal and state equal employment opportunity and other labor and employment, compensation and employee benefit compliance and risk management concerns, as well as advising and defending employers against federal and state employment discrimination and other labor and employment, compensation, and employee benefit related audits, investigations and litigation, charges, audits, claims and investigations.

Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization, Ms. Stamer has advised and represented employers on wage and hour and a diverse range of other labor and employment, compensation, employee benefit and other personnel and staffing matters for more than 20 years. Ms. Stamer also speaks and writes extensively on these and other related matters. See [here](#) for additional information about Ms. Stamer and her experience,

[here](#) to review other recent updates, [here](#) for other articles and publications, and review selected training and presentations [here](#) or contact Ms. Stamer directly.

For additional information about the experience and services of Ms. Stamer and other members of the Curran Tomko Tarski LLP team, see [here](#).

Other Helpful Resources & Information

If you or someone else you know would like to receive future updates about developments on these and other concerns, please be sure that we have your current contact information – including your preferred e-mail – by creating or updating your profile [here](#) or e-mailing this information to cstamer@cttlegal.com or registering to participate in the distribution of these and other updates on our CTT HR & Employee Benefits Update distributions in blog form via RSS feed [here](#). You also may be interested in staying abreast of emerging internal controls and compliance challenges by reviewing and registering for our [Corporate Compliance, Risk Management & Internal Controls](#) distributions. For important information concerning this communication click [here](#). If you do not wish to receive these updates in the future, send an e-mail with the word “Remove” in the Subject to support@cttlegal.com.

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