



Affirmative Action: Is Your Bank in Compliance?

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The Office of Federal Contract Compliance Programs (OFCCP), a division of the Department of Labor (DOL), has recently stepped up its enforcement efforts related to affirmative action. In 2008 alone, the OFCCP conducted more than 5,000 compliance reviews, which resulted in a record recovery of \$67.5 million dollars in financial remedies.

IN RECENT MONTHS, THE OFCCP HAS specifically begun targeting financial institutions, as well as entities that accept stimulus money, for its next round of compliance checks. Your financial institution could be the next target. A financial institution that serves as a depository of government funds in any amount, or that acts as an issuing and paying agent for U.S. Savings Bonds and Notes, is required to prepare and put into place Affirmative Action Programs (AAPs) pursuant to Executive Order 11246, as are federal contractors with 50 or more employees and federal contracts of at least \$50,000.

As part of one's affirmative action requirements, employers must track

the gender, race, and veteran status of each individual who applies for a particular job, as well as analyze other employment practices, such as transfers, promotions, and terminations, to ensure their practices reflect race and gender neutral employment processes. The OFCCP has focused intently on these employment practices, and held that ignorance of the requirement to maintain the data is not an excuse for non-compliance.

The OFCCP also has focused recently on employer compensation practices that have a disparate impact on women and minorities. A few years ago, the OFCCP issued a guidance on employer compensation practices that, among other issues, recommended

that employers self-evaluate their practices to determine the existence of any current or potential disparate compensation concerns. The OFCCP is now training its compliance officers to conduct detailed evaluations of employer compensation practices during all compliance reviews.

Companies that fail to maintain adequate AAPs, and/or those that fail to remedy possible indicators of discrimination, face stringent penalties from the OFCCP, including monetary penalties, backpay awards, mandated hiring, and even debarment.

Due to the OFCCP's increased focus on AAP compliance, and the stringent penalties associated with non-compliance, it is even more important to ensure that you take steps toward compliance before receiving a compliance review letter. ▶

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