

NOTES

Event Sponsor: Office of Federal Contract Compliance Programs (OFCCP)
Location: Web (Washington D.C.)
Date: Wednesday, January 20, 2010

Presenter(s): Patricia A. Shiu, Director

Scribe: Carolyn Roehl
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Event Topic: Listening Session Re Regulatory Changes in Executive Order 11246

This was the third in a series of web listening sessions sponsored by the OFCCP Director. The purposes of the listening sessions were: to highlight OFCCP's anticipated regulatory activities; to offer an opportunity for stakeholders to provide suggestions and recommendations to OFCCP; and to provide information on how stakeholders can participate in the official rule-making process. Following is a synopsis of topics discussed:

1. **Monitoring of federally funded construction mega-sites:** The government's intention to monitor federally funded mega-sites is set forth in a memorandum of understanding. Oversight will ensure that minorities and women are being hired, are receiving overtime hours, and are being treated equitably in general. The legal dollar threshold for mega-site status was not readily known, but said to be in the millions of dollars.
2. **Inclusion and promotion of women in trade jobs:** A former electrician who identified herself as the Director of Trades Women, Inc. addressed the gaps between job training programs, apprenticeship programs, and permanent jobs in the contractor community. She urged the OFCCP to push contractors to work with unions and trade programs to give women equal training opportunities during apprenticeships. This would allow women to become more competitive for permanent jobs at the end of their apprenticeships. The caller also suggested a gap funding program to support the long-term effort it takes to become qualified in a trade. Ms. Shiu said the OFCCP will look at improving initiatives that promote and support women in trade fields.
3. **Requirement for formal Affirmative Action Programs.** A caller asked if an AAP is required when a federal contractor has practices in place to comply with affirmative action hiring regulations. Ms. Shiu did not specifically answer this question, but stated OFCCP is available to offer technical advice and training to contractors who may need assistance.
4. **Checkerboarding to meet Affirmative Action compliance requirements.** A caller from the University of Massachusetts Labor Resource Center addressed a practice called checkerboarding. This practice moves women workers from one project to another to show inclusion of women at federal contract worksites, as needed. A study found that women were moved so often that they failed to get the training they needed to advance in their respective trades. A founding member of a

Chicago women trades organization agreed. She added that women need to be included in the regular workforce, rather than including them mainly in apprenticeships as a means of meeting compliance goals. The Chicago caller also suggested that a minimum-length-of-retention rule might reduce checkerboarding.

5. **Fraudulent apprenticeship programs.** The University of Massachusetts Labor Resource Center caller mentioned another study finding that most non-union apprenticeship programs in Massachusetts never actually graduated anyone.
6. **Barriers that keep women from getting into the trades.** A third study mentioned by the University of Massachusetts Labor Resource Center caller focused on barriers that deter women's access to good paying trade jobs. She mentioned a lack of enforcement of initiatives designed to increase the numbers of women in the trades. The OFCCP Director asked the caller to send her the three studies she had cited.
7. **Job bank initiatives.** Tools like the former America's Job Bank make it possible to link people to jobs. Job banks also educate the public on the whereabouts of available jobs. Ms. Shiu agreed that the concept of a job bank could be used in a lot of different ways to support affirmative action.
8. **Numerical goalsetting.** A representative from the federal contracting community stated that the time and effort spent calculating and updating percentages and goals could be better spent trying to find qualified minority candidates.
9. **Community advocacy.** A representative from the outreach community in New Jersey recommended involving community advocacy to pressure both union and non-union contractors to include minorities and women in their workforces. Ms. Shiu stated that it is the job of the OFCCP, not community-based organizations, to evaluate and enforce the law and that OFCCP intends to do that effectively.
10. **Intentional exclusion of women on worksites.** A caller who identified herself as the first woman plumber in the San Francisco Water Department stated that controlling payment of funds to contractors can be an effective way to compel them to hire minorities or women. A Jersey City caller asked how to approach contractors who say women are not needed on their worksites. Ms. Shiu stated that you should call the OFCCP if you know of a government contractor who is not complying with affirmative action laws and regulations.
11. **Open-ended compliance evaluations.** A representative from the federal contractor community questioned why compliance evaluations remain open for extended periods of time for no given reason. Ms. Shiu asked about the circumstances, the specific length of the audits, and why the audits took so long. In a conversational interchange with Ms. Shiu, the caller stated that in "quite a few of the cases", contractors submitted information requested by an auditor and never heard anything back. When asked about the specific length of time involved, the caller

said some evaluations have continued for as long as three-to-four years without closure. The caller recommended that contractors be told why evaluations are being extended over a year in length, including what the contractor could do to bring the evaluation to a close. Perhaps OFCCP should consider getting its district offices involved. Ms. Shiu said that OFCCP will consider this issue. She added that perhaps procedural changes need to be made concerning evaluations that extend over a designated period of time. The changes could address keeping contractors informed or closing some evaluations administratively, with no findings issued.

12. **A fall-back forgiveness clause.** A caller from the federal contractor community related the difficulty of meeting affirmative action percentages at remote worksites where minorities or women are not available in the local workforce. Ms. Shiu reiterated OFCCP's willingness to offer technical advice and training to contractors who may need assistance.

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