



### **AFFIRMATIVE ACTION UPDATE: MARCH 2007**

*This bulletin provides an update for Affirmative Action subscribers. Please contact us if you have any questions about these issues or about their effects on your business.*

### **OFCCP Sends Corporate Scheduling Announcement Letters**

The OFCCP has announced that, beginning April 2, 2007, its regional offices will schedule compliance evaluations of non-construction Federal contractors from a second fiscal year 2007 scheduling list. The agency released its first scheduling list in November 2006.

The new scheduling list includes approximately 4500 facilities that have either self-identified as a Federal contractor, or have been identified as such by OFCCP. OFCCP generated this list through its Federal Contractor Selection System (FCSS). This system uses multiple information sources and analytical procedures to select contractors for review, including a mathematical model that ranks contractor establishments based on an indicator of potential workplace discrimination. As part of the selection process, OFCCP attempted to better identify whether a potential contractor actually holds a current Federal contract by matching the EEO-1 list to external Federal contract databases.

This list is supposed to exclude establishments based on a variety of factors, including, for example, establishments that are currently undergoing a compliance evaluation, were evaluated within the last 24 months, or have received the Secretary of Labor's Opportunity Award or an Exemplary Voluntary Efforts Award within the last three years. However, we have continued to see cases where clients received actual audit letters (not just scheduling letters) when they had just closed out an audit in the past six months. If that happens to you, call us and we can help you work with the OFCCP.

OFCCP has mailed a Corporate Scheduling Announcement Letter to the Chief Executive Officer (or other designated point of contact) of each parent company with more than one establishment listed for the scheduling of a compliance evaluation this Fiscal Year. These scheduling letters simply alert the contractor to the possibility that the listed establishments may be scheduled for compliance evaluations.

Of course, whether the contractors receiving these scheduling letters will actually be audited will depend on the workload of individual OFCCP offices and the nature of the

compliance evaluations they do conduct. Every establishment identified in the scheduling letters may not be scheduled for an evaluation. Additionally, it is always possible that establishments that are not “lucky” enough to receive a scheduling letter will still be evaluated by OFCCP for a variety of reasons, such as subsequent scheduling releases, contract award notices, directed reviews, individual complaints, or the conciliation agreement monitoring process.

What should you do if you receive one of these letters? Well, first off, don’t panic, because it really doesn’t mean too much. If you think about it, you really should be prepared for the possibility of an audit at all times. However, certainly make sure your Plan and Adverse Impact Analysis are updated and in good order, if you have not already done so; it’s always better to finalize those things when you have the luxury of time to address any trouble-spots, rather than trying to do it at the last minute in response to an audit letter. Otherwise, just continue with your good faith compliance efforts.

Remember that the OFCCP is mid-way through its fiscal year, so, frankly, it’s better for you to receive a scheduling letter now than it would have been to get one back in November. For those of you who are not lucky enough to have received one yourself, let us know if you would like to see a sample copy of the scheduling letter, or of an audit letter and the attached itemized listing. We’ll be happy to send you one so you can know what to expect.

*This Affirmative Action update was prepared by Donna Eich Brooks and David J. Middlebrooks, attorneys with the law firm of Lehr, Middlebrooks, & Vreeland. Donna can be reached for questions/further information at [dbrooks@lehrmiddlebrooks.com](mailto:dbrooks@lehrmiddlebrooks.com) or at (205) 226-7120, and David can be reached at [dmiddlebrooks@lehrmiddlebrooks.com](mailto:dmiddlebrooks@lehrmiddlebrooks.com) or (205) 323-9262.*

Lehr Middlebrooks & Vreeland, P.C.  
P.O. Box 11945  
Birmingham, AL 35202-1945  
(205) 326-3002

The Alabama State Bar Requires The Following Disclosure:  
“No Representation Is Made That The Quality Of The Legal Services To Be Performed  
Is Greater Than The Quality Of Legal Services Performed By Other Lawyers.”