

NEWS & INSIGHTS

OFCCP Contractor Portal and Affirmative Action Plans

INSIGHTSARTICLE

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Over the past decade, the US Department of Labor, through the Office of Federal Contractor Compliance Programs (OFCCP), has continually increased regulatory burdens. Now, covered federal contractors and subcontractors must register with a new “Contractor Portal” and annually certify compliance with written Affirmative Action Plan (AAP) obligations. As with most government action, there are nuances, exceptions and troubleshooting as the program is rolled out. This article provides a brief overview with some points of consideration for the construction industry.

What is the Contractor Portal?

OFCCP launched the Contractor Portal on February 1, 2022. It is an online platform through which OFCCP is mandating federal contractors and subcontractors register and upload information pertaining to AAPs. In the past, the OFCCP has conducted relatively few AAP audits compared to the number of federal contractors and subcontractors. In an effort to increase audits, OFCCP created the Contractor Portal to supposedly assist OFCCP in finding non-compliant contractors/subcontractors.

Starting March 31, 2022, with a deadline of June 30, 2022, covered contractors must use the Contractor Portal to certify compliance with annual AAP requirements. For companies that begin federal contracting at a later point, they must create an AAP within 120 days of being awarded a covered federal contract and must register and certify compliance within 90 days of creating the AAP. It is believed that the certification will only require an affirmative statement, but not uploading or providing AAP documentation. However, the OFCCP may audit or investigate and require certain contractors/subcontractors to upload AAPs through the Contractor Portal.

Who is required to use the Contractor Portal?

All *covered supply and service* federal contractors and subcontractors are obligated to register with the Contractor Portal. This does not apply to construction contractors because they are not considered supply and service contractors. Let's break this down into some details.

First, the contractor/subcontractor must be a covered entity. For non-construction companies to be covered, the entity must have at least 50 employees and must also meet specific contract amount thresholds. A single contract of at least \$50,000 is the threshold for written AAP obligations for (i) EO 11246 (pertaining to women and minorities); and (ii) Section 503 (disabled individuals). If the entity has a single contract of at least \$150,000, then, it also meets the threshold for written AAP obligations VEVRAA (protected veterans).

Thus, all non-construction companies that meet the above criteria must register on the Contractor Portal.

Are construction contractors required to use the Contractor Portal?

For the time being, construction contractors are not required to register on the Contractor Portal. OFCCP has specifically stated that only supply and service contractors are required to register. If a construction company also has supply or service contracts, however, it would be required to register. Construction companies have historically been treated differently from non-construction companies. Notably, construction companies are not required to prepare written AAPs for EO 11246; instead, the threshold requirements are different and an EEO 16 Steps must be followed.

OFCCP is currently in the midst of rolling out the program. For now, it is presumed that covered design professionals that enter federal contracts or subcontracts would be required to register and certify on the Contractor Portal. OFCCP is still providing further information on the program, which may change that presumption, but design work has historically been treated separate from construction. For example, similar to supply and service contractors,

design professionals are required to prepare written AAPs for EO 11246; meanwhile, construction contractors are only required to comply with EEO 16 Steps.

Saxton & Stump attorneys [Ron Pollock](#) and [Matt Chabal](#) are available to advise companies on federal contracting and related compliance requirements.

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