

CLIENT UPDATE

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The OFCCP issued its Third Revision to the Functional AAP Directive on September 21, 2022.
<https://roffmanhorvitz.com/ofccp/directive-2013-01-functional-affirmative-action-programs-faaps-REVISION-3.php>

Our short summary of these edits appears below:

In our opinion, these latest revisions are minimal and clarifying rather than fundamentally substantive. Four items are worth mentioning:

1. OFCCP's acknowledgement that organizations can prepare AAPs for smaller sites with fewer than 50 employees, and
2. OFCCP's inclusion of some additional notice requirements from the contractor to OFCCP:
 - a. when the contractor has implemented the FAAP agreement,
 - b. when there have been modifications to the contractor's business structure that result in the creation or elimination of one or more functional business units, and
 - c. when the primary corporate contact changes.
3. Procedurally, the OFCCP walked back slightly its commitment to approving or denying the FAAP agreement in 60 days. Now the directive observes that OFCCP generally

makes its decision within 60 days of the request, if all the required information is provided, and OFCCP affords itself the ability to ask for more time if needed (emphasis added).

4. On a more humorous note, as lawyers, we also appreciate that OFCCP has moved away from using un-numbered bullets and definitions in sections 7 and 8 of the Directive and has implemented an outline structure that makes it much easier for us to reference specific sections when talking with clients.

We provide additional context for the first two edits we mentioned above:

THE LESS-THAN-50 EDIT

Earlier in 2022, during the OFCCP's Contractor Portal certification process for Supply and Service contractors, it came to light that OFCCP had not imported all establishments into the employer's verification list, but instead had only imported establishments with 50 or more employees. Some employers that choose to prepare AAPs for their locations with fewer than 50 employees had to add back in those smaller establishments, and other employers didn't realize that their list was incomplete until after they certified.

FAAP directives versions 1 and 2 corroborated that incorrect interpretation.

Because OFCCP's regulations have always allowed employers the choice of either rolling up their smaller locations into larger locations, or preparing separate AAPs for smaller locations, FAAP directive Revision 3 clarifies this principle by removing the incorrect statement from old section 5.

MORE NOTICE TO OFCCP

Under the third revision, employers with FAAP agreements will be required to notify OFCCP electronically

1. Within 120 days of receiving OFCCP's approval that they have implemented the FAAP agreement;
2. Within 60 days of any modifications, as provided in the modification section of the

Directive; and

3. Within 60 days of any change to the primary corporate contact.

The gist of these edits is that OFCCP wants the FAAP employer to stay in touch with it when there are changes to its corporate structure that affect the FAAPs. For organizations with FAAPs, you may want to:

1. add “notify OFCCP” to your mergers and acquisitions checklist, and
2. update the job description of the secondary corporate contact listed in the FAAP agreement to include notifying OFCCP if the primary FAAP contact departs the organization during the term of the agreement.

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ROFFMAN HORVITZ SUPPORTS FUNCTIONAL AAP AGREEMENTS

In our opinion, when done thoughtfully, there are many benefits to preparing your AAPs along functional lines, including greater internal accountability by responsible executives. If your organization would like to discuss the pros and cons of functional AAPs, let us know.

REDLINED ADDITIONS AND DELETIONS

If you would like a copy of our redlined compare versions showing what was added and what was deleted from Revision 2 to Revision 3, send us an email.

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About Roffman Horvitz

Roffman Horvitz, PLC was built from the ground up to provide a best-in-class outside counsel option for federal contractor employers in the areas of OFCCP compliance, affirmative action plan preparation and design, and employment data analytics.



Alissa A. Horvitz

Alissa Horvitz is a Member Attorney in the firm she co-founded with Josh Roffman. Alissa focuses her practice on representing clients in various matters before the OFCCP, preparing for and defending OFCCP audits and onsite visits, responding to OFCCP information requests, and conducting live and in-person training seminars on OFCCP compliance.



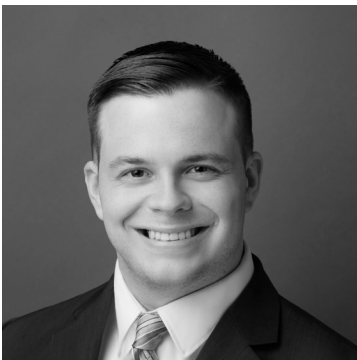
Joshua S. Roffman

Joshua Roffman focuses his practice primarily on advising and overseeing the preparation of affirmative action plans, conducting privileged pay equity analyses, and representing clients in various matters before the Office of Federal Contract Compliance Programs (OFCCP) in all six OFCCP regions, preparing for and defending OFCCP audits and onsite visits, responding to OFCCP information requests, evaluating single entity claims, opposing OFCCP jurisdictional claims for companies without government contracts, petitioning OFCCP for separate facility exemptions, evaluating compliance with the Uniform Guidelines on Employee Selection Procedures, and facilitating the identification of Internet applicants per OFCCP regulations.



James M. McCauley

James McCauley is an Associate Attorney with Roffman Horvitz. His primary focus is assisting in the preparation of affirmative action plans for federal government contractors. James's experience includes creation and review of affirmative action plans, preparation of EEO-1 employment data, and analysis of applicant and hire records to address potential claims of hiring disparities.



Christopher J. Laudенbach

Christopher Laudенbach is a first-year Associate Attorney at Roffman Horvitz. He assists in the preparation and review of affirmative action plans for federal government contractors.

