OFCCP Focused Reviews

What to Expect and How to Prepare

Chris Patrick
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Jackson Lewis P.C. | Denver Office
Christopher.Patrick@jacksonlewis.com | (303) 876-2202
Christopher Patrick

**Chris Patrick** is a Principal in the Denver, Colorado, office of Jackson Lewis P.C. and is a member of the Firm’s Affirmative Action Compliance and OFCCP Defense Practice Group and Pay Equity Resource Group.

Chris regularly counsels on EEO compliance, affirmative action, pay equity, and diversity. He also oversees the preparation of affirmative action plans, directs privileged pay analyses under state and federal laws, and defends employers in OFCCP audits.
Today’s Agenda...

- What is a Focused Review?
- What to Expect.
- How to Prepare.
What is a Focused Review?
What is a focused review?

A focused review is one that is restricted to one or more components of the contractor’s organization or one or more aspects of the contractor’s employment practices.

Section 503 focused reviews will include a comprehensive review of the contractor policies and procedures as they relate solely to Section 503.

- Section 503 Focused Review FAQs (my slight revisions)
What is a Focused Review?

Focused Reviews Began in 2019

- Restricted scope of review
  - So far, only Section 503 focused reviews [41 C.F.R. § 60-741]
  - VEVRAA (veteran) focused reviews [41 C.F.R. § 60-300] are coming…
  - OFCCP has forecast promotions focused reviews
- Currently, apply to “Headquarters” Establishments (EEO-1 Type 3 Reports)
  - Policies, culture, messaging, programs “come from headquarters”
- OFCCP training has addressed compliance and best practices
What to Expect.
What is a focused review?

... The reviews will also include an on-site investigation and interviews with managers responsible for EEO and Section 503 compliance as well as employees affected by those policies.

OFCCP would also seek to evaluate the handling of accommodation requests, to ensure that individuals with disabilities are not being discriminated against in employment.

- Section 503 Focused Review FAQs (my slight revisions)
What to Expect.

Section 503 Review Process

- Scheduling Letter Arrives
- Connect with OFCCP
- Audit Submission Due
- Desk Audit & Follow-Up
- Onsite Planning
- Onsite
- Closure (hopefully)

VEVRAA Review Process (projected)

- Scheduling Letter Arrives
- Connect with OFCCP
- Audit Submission Due
- Desk Audit & Follow-Up
- Onsite Planning
- Onsite
- Closure (hopefully)
What to Expect.

Section 503 Review Process
What to Expect.

Scheduling Letters

- Establishment Review Itemized Listing
  - 22 Items
- Focused Review Document Request
  - Executive Order AAP
  - Section 503 (or Veteran) AAP
  - 41 C.F.R. § 60-###.44(k) data (1 year)
    - Hires, applicants, job openings, jobs filled
  - Disability Utilization Analysis (or Benchmark Information)
  - Accommodations polices, requests
  - Assessments of:
    - Effectiveness of Outreach
    - Job Qualifications
    - Personnel Processes
What to Expect.

Section 503 Review Process

- Scheduling Letter Arrives
- Connect with OFCCP
- Audit Submission Due
- Desk Audit & Follow-Up
- Onsite Planning
- Onsite
- Closure (hopefully)
What to Expect.

Section 503 Review Process

- Scheduling Letter Arrives
- Connect with OFCCP
- Audit Submission Due
- Onsite Planning
- Onsite
- Desk Audit & Follow-Up
- Closure (hopefully)
What to Expect.

Desk Audit & Follow Up

• Typically very light

• Areas of Concentration:
  • Assessments of outreach
  • Assessment of personnel process
  • Assessment of job qualifications
  • Last diversity survey date & response rate

At times in Section 503 review, verification that jobs were posted with the state – *but why?*
What to Expect.

Section 503 Review Process

- Scheduling Letter Arrives
- Connect with OFCCP
- Audit Submission Due
- Onsite Planning
- Onsite
- Desk Audit & Follow-Up
- Closure (hopefully)
What to Expect.

Onsite Planning

1. OFCCP’s “Step 1:” Onsite Date
2. OFCCP’s “Step 2”: Onsite Letter

Solution:
- Request draft onsite letter to make sure everything can be available for onsite date
- Work with OFCCP to identify necessary employees and managers
- Find workable dates to accomplish OFCCP’s goals (even farther out than OFCCP would like)
What to Expect.

Onsite Planning

Requests to identify:
1. Employees responsible for application/selection process
2. Employees responsible for reasonable accommodation process
3. Employees who self-identified as having a disability
4. Employees who requested a reasonable accommodation

Requests to describe the process for:
1. Applying
2. Self-identifying
3. Requesting accommodations
4. Requesting leave

Requests to provide:
1. Blank application
2. Training documentation
3. Self-id forms
4. Personnel files for review
5. Additional policies – flexible workplace, disability leave, FMLA
Onsite Considerations

1. Employee Relations. Consider impact of OFCCP interview request due to disability
2. Prepare Managers. Ensure managers can speak to the topics on which they have been identified
3. Personnel Files. Have personnel files available (and review them)
4. Postings. Ensure required postings are up
5. Schedule. Consider working with OFCCP to confirm a schedule for the day
What to Expect.

Section 503 Review Process

- Scheduling Letter Arrives
- Connect with OFCCP
- Audit Submission Due
- Desk Audit & Follow-Up
- Onsite Planning
- Onsite
- Closure (hopefully)
What to Expect.

Onsite

Duration: 1-3 days
Predominately manager interviews
• Onsite letter will set topics
• Review OFCCP Section 503 Focused Review Onsite Guide

Recent Virtual Onsite
• 9:00 a.m. to 12:00 p.m.
• No facility inspection (deferred if necessary)
• Employee interviews afterward at employee convenience
• No “onsite” document review

General Onsite Schedule
1. Entrance Conference
2. Facility Inspection
3. Manager Interviews
   1. Applications, Outreach, Postings, Qualification Review
   2. Accommodation
   3. Short Term Disability
4. Employee Interviews
   1. Self-id
   2. Accommodations
   3. Leave
5. OFCCP Personnel File Review
6. Exit Conference
What to Expect.

Section 503 Review Process

- Scheduling Letter Arrives
- Connect with OFCCP
- Audit Submission Due
- Desk Audit & Follow-Up
- Onsite Planning
- Onsite
- Closure (hopefully)
What to Expect.

Closure

We’ve seen closure *within week* following the onsite.

--- *But* ---

A client has also received technical violations for *less than 2%* of job postings not having correct tagline.
What to Expect.

OFCCP Resources

- **Section 503**
  - Section 503 Landing Page
  - Section 503 Best Practices, Stakeholder Resources, and Sample Inclusion Programs
  - Section 503 Scheduling Letter
  - Sample Section 503 Focused Review On-Site Guide

- **VEVRAA**
  - VEVRAA Focused Review Landing Page
  - VEVRAA Best Practices, Stakeholder Resources
  - VEVRAA Scheduling Letter
How to Prepare.
How to Prepare.

Check the CSAL List

- OFCCP Freedom of Information Act Library
  - [https://www.dol.gov/agencies/ofccp/foia/library](https://www.dol.gov/agencies/ofccp/foia/library)

Corporate Scheduling Announcement Lists

The CSAL is a courtesy notification to an establishment selected to undergo a compliance evaluation. OFCCP sends the CSAL in advance of the OMB approved scheduling letter. Additional information is available on the [CSAL Frequently Asked Questions page](https://www.dol.gov/agencies/ofccp/foia/library).

- FY 2019 CSAL Supplement
- FY 2019 CSAL List
- FY 2018 CSAL Supplement
- FY 2018 CSAL List
- FY 2017 CSAL List
Check Your Systems – You can’t go back in time…

• Evaluate Applicant and Employee Self-Id Process & Forms – when was your last survey?
• Ensure Data Collection
• Confirm Website Accessibility Statement – and that some is there to respond promptly
• Review Accommodations Policies & Procedures – how are requests tracked?
• Assess EEO Taglines – and that they are on all postings
• Verify Required Purchase Order Language
• Conduct EEO/AA Trainings
• Ensure Record Retention
• Verify Targeted Outreach
• Consider Developing Additional Programs – D&I (D,I&B), Employee Resource Groups, etc.
Assess Your Qualifications.
Assess Your Physical and Mental Qualifications.

Develop and Document a Schedule to...

Determine if you use any mental or physical job qualifications.

If so, assess if they are necessary.

If not, remove and document.

If not, stop and document.

If so, determine if they screen out individuals with a disability.

If not, stop and document.

If so, determine if they are job related and consistent with business necessity.

If not, remove and document.

If so, document to defend them.

If not, stop and document.
Assess Your Personnel Process.
Assess Your Personnel Process.

41 C.F.R. 60-[###].44(b): The Contractor Shall…

1. ...ensure that its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications...

2. ...ensure that its personnel processes do not stereotype in a manner which limits access to all jobs for which they are qualified.

3. ...ensure that equal access to its personnel processes, including through technologies.

4. ...provide reasonable accommodation to ensure equal opportunity in its personnel processes.

5. ...periodically review such processes and make any necessary modifications to ensure that these obligations are carried out.

6. ...prepare description of the review and any necessary modifications.

7. ...design procedures that facilitate a review by the contractor and the Government.

...of applicants and employees with known disabilities...

...for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available.
Assess Your Personnel Processes.

Review of Personnel Processes.

• Consider your personnel processes – hiring, promotion, training opportunities
• Where might individuals with a disability be impacted?
  • Application
  • Interview
  • Manager training
  • Performance evaluations
• Identify any technologies involved
  • Consider *Web Content Accessibility Guidelines (WCAG 2.0)* and *Section 508 of the Rehabilitation Act*
• Prepare description of your review
• Determine a schedule for next review
Assess Your Outreach Efforts.
Assess Your External Outreach & Recruitment Efforts.

41 C.F.R. 60-###.44(f)(3): The Contractor Shall...

...on an annual basis...

...review the outreach and recruitment efforts it has taken over the previous twelve months ...

...to evaluate their effectiveness in identifying and recruiting qualified individuals with disabilities and veterans.

...and the contractor’s conclusion as to whether each effort was effective.

...including at a minimum the criteria it used to evaluate the effectiveness of each effort...

And document each evaluation...

Among these criteria shall be the data collected under x44(k) for the current year and the two most recent previous years.

The contractor's conclusion must be reasonable as determined by OFCCP.

If the contractor concludes the totality of its efforts were not effective, it shall identify and implement alternative efforts.
Assess Your Outreach Efforts.

Takeaways

• Document each effort
• Establish criteria for assessing
• Assess each effort – with a reasonable conclusion
• Use x44(k) data
• Assess overall effectiveness
• If the totality of the efforts were not effective, change sources
Assess Your Outreach Efforts.

Nuts and Bolts

- No required form
- Why reinvent the wheel?
  - Example: OFCCP Sample AAP
- Are precise dates required?
- Possible Conclusions?
  - Effective
  - Not Effective
  - Promising?
  - Too soon to tell?
  - Undetermined?
- Are metrics required?

### Table: Outreach/Recruitment Activity

<table>
<thead>
<tr>
<th>Outreach/Recruitment Activity</th>
<th>Date of Activity</th>
<th>Description</th>
<th>Evaluation of Each Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual meeting with State Vocational Rehabilitation Service Agency (SVRA)</td>
<td>November 15, 2014</td>
<td>Will provide information regarding FCI job openings to SVRA starting January 1, 2015.</td>
<td>Promising.</td>
</tr>
<tr>
<td>Listing of jobs with Employment One-Stop Center</td>
<td>Recurring</td>
<td>All jobs are posted with Employment One-Stop Career Center.</td>
<td>Effective.</td>
</tr>
<tr>
<td>Briefing of Local Disability Advocates (LDA)</td>
<td>September 1, 2014, May 2019</td>
<td>Briefed representatives of LDA, a local disability advocacy group, regarding FCI’s services and job opportunities, and provided an FCI facility tour.</td>
<td>Effective.</td>
</tr>
</tbody>
</table>

### Assessment of Effectiveness of Totality of Outreach/Recruitment Efforts:

[Insert Narrative that Assesses Totality of Efforts & Use x44(k) Data]

### Criteria for Evaluation:

1. To what extent did the activity attract qualified applicants with disabilities?
2. To what extent did the activity result in the hiring of qualified individuals with disabilities?
3. To what extent did the activity expand FCI’s outreach to individuals with disabilities in the community?
4. To what extent did the activity increase FCI’s capacity/capability to include individuals with disabilities in its applicant pool and workforce?
Thank you.