

## LEGAL UPDATES

# OFCCP Portal for Federal Contractors Launching February 1, 2022

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On February 1, 2022, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) will launch its electronic Contractor Portal, through which covered federal contractors and subcontractors will be required to register and annually certify that they have developed and maintained Affirmative Action Programs (AAPs) in compliance with applicable OFCCP requirements. This alert provides a high-level overview of requirements related to the Contractor Portal, as well as anticipated legal challenges to the same. For more information or for any questions not covered below, we encourage you to contact your Lathrop GPM attorney.

## What is the Contractor Portal?

The Contractor Portal is a new OFCCP online platform by which the OFCCP will require covered federal contractors and subcontractors to register and then annually certify their compliance in having developed and maintained AAPs. The Contractor Portal will also be used by covered contractors and subcontractors to upload their AAPs during any compliance audit by the OFCCP.

## Who is required to use the Contractor Portal?

All "covered" federal contractors and subcontractors will be required to register and annually certify AAP compliance through the Contractor Portal.

Covered federal contractors and subcontractors are defined by the requirements set forth in the regulations administered by the OFCCP based on employee size and contract award thresholds. Entities entering into contracts with the federal government or into subcontracts with entities that are fulfilling federal contracts must carefully analyze whether they are a covered contractor or subcontractor under the regulations.

## What are the key dates relevant to the Contractor Portal?

On February 1, 2022, covered contractors and subcontractors may begin registering through the Contractor Portal.

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On March 31, 2022, covered contractors and subcontractors may begin certifying their AAP compliance through the Contractor Portal.

By June 30, 2022, covered contractors and subcontractors must have registered and certified their AAP compliance through the Contractor Portal.

New federal contractors and subcontractors will have 120 days from the date of entering into a covered contract or subcontract to develop their AAPs and must thereafter register and certify compliance through the Contractor Portal within 90 days of developing their AAPs.

## **What are the potential consequences for failure to certify AAP compliance through the Contractor Portal?**

The OFCCP has indicated that covered contractors and subcontractors who fail to annually certify AAP compliance through the Contractor Portal will more likely be on the OFCCP's audit selection scheduling list than contractors and subcontractors who have self-certified their AAP compliance through the Contractor Portal.

Additionally, the OFCCP has stated that it may file debarment actions (e.g., an action to exclude an entity from eligibility for new Federal contract awards) against contractors who refuse to comply with the OFCCP's Contractor Portal initiatives, including annual self-certification of AAP compliance.

At this time, the OFCCP has not announced any financial fines or penalties for non-compliance with its Contractor Portal initiatives.

## **Are any legal challenges expected with respect to the Contractor Portal?**

Yes, it is widely anticipated that the OFCCP's Contractor Portal initiatives, including the requirement of annual self-certification of AAP compliance and applicable enforcement measures, will encounter legal challenges. The OFCCP itself has previously acknowledged that it lacks regulatory authority to require any electronic or digital filings and it is expected that this issue, along with others, will be raised if legal challenges are filed. Accordingly, covered contractors and subcontractors should watch for additional developments related to the Contractor Portal prior to the June 30, 2022 self-certification of AAP compliance deadline.