



National Industry Liaison Group™

Working together towards equality in the workplace

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March 4, 2011

VIA ELECTRONIC SUBMISSION & REGULAR MAIL

Debra A. Carr

Director, Division of Policy, Planning, and Program Development
Office of Federal Contract Compliance Programs
Room N3422
200 Constitution Avenue, N.W.
Washington, D.C. 20210.

Re: National Industry Liaison Group Comment in Response to OFCCP Notice to Rescind the Systemic Compensation Discrimination Standards and Voluntary Self-Evaluation Guidelines

Reference to Comment Number 1250-ZNE

Dear Director Carr:

The National Industry Liaison Group (“NILG”) Board welcomes the opportunity to comment on the Office of Federal Contract Compliance Programs’ (“OFCCP”) Notice of Proposed Rescission of the Standards Interpreting Nondiscrimination Requirements of Executive Order 11246 with respect to Systemic Compensation Discrimination (“the Standards”) and Voluntary Guidelines for Self-Evaluation for Compliance with Executive Order 11246 with respect to Systemic Compensation Discrimination (“the Guidelines”).

NILG BACKGROUND, MISSION AND CONSTITUENCY

By way of background, the NILG was created almost 30 years ago as a partnership between OFCCP and federal contractors as a forum for working towards equality in the workplace. In addition, local Industry Liaison Groups (“ILGs”) throughout the country formed to further this unique partnership of public and private sector cooperation to advance workplace equal opportunity.



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Over the years, the NILG and ILGs have reached out to OFCCP and other agencies, such as the EEOC, with the mutual goal of fostering a non-discriminatory workplace. The NILG Board is comprised of members elected by local ILGs from across the United States.

Among national employer associations focused on workplace equal opportunity and affirmative action, NILG is unique in its representation of small and medium-sized employers. These employers often do not have the infrastructure or resources to develop elaborate, costly compliance processes that large national employers enjoy. Moreover, where possible, our constituency seeks to keep its compliance efforts in-house rather than incur the significant costs associated with outsourcing compliance support to third-party consultants or law firms.

Nonetheless, our ILG constituents take both the spirit of EEO and compliance with OFCCP's specific requirements seriously. Therefore, particularly for these employers, it is important they receive specific, practical guidance regarding the steps employers should take to comply with OFCCP's requirements.

OFCCP SEEKS TO RESCIND THE STANDARDS AND GUIDELINES WITH NO EQUIVALENT REPLACEMENT

In its notice of intent to rescind the Standards and Guidelines, OFCCP stated the Standards and Guidelines were overly rigid and, consequently, "limited OFCCP's ability to effectively investigate, analyze and identify compensation discrimination." While the NILG takes no position as to whether the Standards are overly rigid, we appreciate OFCCP's focus on finding practical methods to effectively analyze and identify pay discrimination. Should the Standards and Guidelines be rescinded, we encourage the Agency to develop effective alternative methods to analyze pay and identify unexplained pay disparities.

In the rescission notice OFCCP states, in the absence of the Standards, that it will adhere to Title VII principles when conducting pay investigations. The notice further provides that "OFCCP believes it is unnecessary to issue [guidance] articulating its interpretations of Title VII principles related to compensation discrimination." Instead the Agency proposes to set forth its approach to investigating pay discrimination through "the Federal Contractor



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Compliance Manual, directives and staff guidance materials.” Thus, OFCCP makes clear it does not intend to issue detailed guidance to employers but will do so for its enforcement personnel.

NILG URGES OFCCP TO PROVIDE DETAILED GUIDANCE AS A REPLACEMENT TO THE STANDARDS AND GUIDELINES SO EMPLOYERS CAN CONTINUE TO ENGAGE IN SELF-MONITORING WITH THE GOAL OF ENSURING PAY EQUITY

As OFCCP stated in the rescission notice, “[i]n the absence of the Voluntary Guidelines, contractors will still be obligated to conduct self-evaluations of compensation practices as required by 41 CFR 60-2.17(b)(3).” Indeed, the regulatory section cited by OFCCP requires contractors to proactively conduct “in-depth analyses of their compensation systems” at least annually to be in compliance with OFCCP requirements. Thus, the employers’ obligation to conduct regular self-monitoring will not go away with the rescission of the Guidelines.

To conduct such self-analyses, contractors need clear, practical guidance from the OFCCP. In the absence of such guidance, many employers, particularly smaller and mid-size employers without the “deep pockets” to hire costly third-party experts, will be discouraged from conducting any type of proactive self-analysis. And, as the Agency often acknowledges, its limited enforcement resources allow it to investigate the pay practices of only a tiny percentage the contractor community each year. Thus, encouraging proactive self-audits is undoubtedly the most effective way to ensure that pay equity has the broadest reach within the contractor community. Without specific guidance, OFCCP risks encouraging a large segment of the contractor community to cease efforts altogether to ensure pay equity. This simply cannot be OFCCP’s intent.

Finally, OFCCP states that after rescission of the Guidelines, it will provide “needed compliance assistance” through means such as webinars and publishing Frequently Asked Questions (FAQs) on its website. Respectfully, we have not found that past OFCCP webinars and website FAQs provide sufficient guidance to allow our constituents to tackle the practical day-to-day compliance challenges the Agency’s requirements present. As a supplement to specific, written guidance, webinars and FAQs can help. However, they cannot serve as an adequate replacement.



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For these reasons, NILG urges OFCCP to publish detailed replacement guidance for employers should the Guidelines be rescinded. To do otherwise risks the likelihood that a large segment of the contractor community will no longer engage in the proactive self-monitoring both OFCCP and NILG believe is so important to ensuring pay equity.

* * *

We thank OFCCP in advance for its consideration of our observations and recommendations. If OFCCP wishes to discuss NILG's comments, please contact Mickey Silberman, NILG Board Counsel, at (303) 225-2400 or silbermanm@jacksonlewis.com.

Respectfully submitted,

The NILG Board