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OFCCP Releases List of Federal Contractors Whose EEO-1 Data Will be Disclosed and Extends Time to Object until February 17, 2023

UPDATE: On February 14, 2023, OFCC announced it was extending the February 17, 2023 deadline to file objections to the disclosure of Type 2 EEO-1 data. The new deadline to submit objections is March 3, 2023.

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On or about February 7, 2023, OFCCP updated its announcement regarding the OFCCP list of 13,520 federal contractors (List of Non-Objectors or List) that have not objected to the release of their Type 2 EEO-1 data for the years 2016-2020 (Type 2-EEO-1 data). The OFCCP announcement that accompanies the List provides federal contractors until February 17, 2023 to either advise OFCCP that their organization erroneously appears on the List, or to file objections, if none were previously filed.

In August 2022, we discussed OFCCP's intention to release Type 2-EEO-1 data in response to a Freedom of Information Act request in a Labor & Employment Law Insights blog post and a Contractor's Perspective blog post. At that time, OFCCP required objections to be filed by September 19, 2022. The deadline was extended originally until October 19, 2022. Since that time, OFCCP has signaled its intention to release EEO-1 data for federal contractors who have not filed objections. OFCCP has extended the deadline to February 17, 2023 to enable federal contractors to object to the release of their data for the following reasons:

The organization has previously submitted an objection to the disclosure of EEO-1 data;

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The organization is on the OFCCP List of Non-Objectors, and the organization was not a federal contractor during the relevant period; or

There are entities associated with the organization that should be covered within the objection previously filed, including merged companies, subsidiaries, and any additional entity information needed to confirm the objection.

Notably, the current OFCCP announcement provides federal contractors that have not previously objected to disclosure of the EEO-1 data another opportunity to file their objections. Federal contractors that have not previously filed objections must include with their objections a statement of good cause for not filing objections to disclosure during the time frame previously provided by OFCCP. OFCCP can use its discretionary authority to consider objections filed outside of the previous deadline.

On February 10, 2023, Chairwoman of the Committee on Education and the Workforce Virginia Foxx issued a letter to OFCCP Director Yang stating that federal contractors who were previously unaware of the intended disclosure or were not provided sufficient information about potential disclosure should be provided additional time to submit objections to the disclosure of their EEO-1 data. She has requested that OFCCP extend the deadline for filing objections for another 60 days. There is no indication at this time of whether OFCCP will extend its deadline beyond February 17.

Some federal contractors that previously filed objections were notified by OFCCP that their EEO-1 data would be disclosed. Prompt notification to OFCCP that objections were filed appears to have resulted in the successful removal of those federal contractors from the OFCCP's List of Non-Objectors.

What this means to you

As a result, we advise all federal contractors to file objections by Friday, February 17, 2023 if they have not filed objections but consider and treat their EEO-1 data as confidential, or fall under one of three other reasons itemized above.

Contact us

If you have any questions about the OFCCP announcement, EEO-1 data, or any related matters, please reach out to Michael Schrier, Tracey O'Brien or your Husch Blackwell attorney.

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