



**OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS**  
**American Recovery and Reinvestment Act of 2009 (ARRA)**  
**Compliance Evaluation Scheduling Procedures**

*Frequently Asked Questions*

**General**

**1. What is ARRA?**

The American Recovery and Reinvestment Act of 2009 (Recovery Act or ARRA) was signed into law by President Obama on February 17, 2009. The Recovery Act authorizes up to \$787 billion in Federal spending through September 30, 2010. Potential Federal spending includes funding for construction projects in all 50 states, the District of Columbia, and U.S. territories, as well as the procurement of supplies and services. For more information on the Recovery Act, please visit [Recovery.gov](http://Recovery.gov). Additional information regarding the U.S. Department of Labor's ARRA efforts may be found at [www.dol.gov/recovery](http://www.dol.gov/recovery).

**2. Why are there ARRA scheduling procedures?**

Federal contractors receiving ARRA funds are obligated to comply with the same EEO laws as other federal contractors, and are subject to OFCCP evaluation to ensure their compliance. However, to increase transparency and accountability of ARRA spending, OFCCP is obligated to track its ARRA-related and non-ARRA-related enforcement activities separately. Accordingly, OFCCP has established separate scheduling procedures to provide for compliance evaluations of ARRA funded contractors.

**3. Will OFCCP be using its Active Case Management procedures when evaluating contractors with ARRA funding?**

In Directive Transmittal #285 signed on September 17, 2008, OFCCP outlined compliance evaluation procedures, known as Active Case Management (ACM), for conducting supply & service (non-construction) compliance evaluations. Under ACM procedures, OFCCP conducts only an abbreviated desk audit, in most cases, unless there are indicators of potential systemic discrimination.

ACM procedures will not be used in reviews of ARRA funded contractors. ARRA compliance evaluation procedures require that OFCCP conduct a full compliance review, including a full desk audit and on-site review, of every ARRA funded contractor scheduled for an evaluation, even in the absence of systemic discrimination indicators.

**4. Which federal contractors are ARRA funded contractors?**

An ARRA-funded contractor is a contractor that has entered into a Federal contract, in which the terms of the contract satisfy OFCCP's jurisdiction (i.e., total dollar amount meets the coverage threshold and the funding is Federal or, in the case of construction contracts, federally assisted).



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**5. How will I know if I am scheduled for a compliance evaluation under OFCCP's ARRA scheduling procedures?**

Non-construction contractors will receive the established OFCCP non-construction scheduling letter identifying the contractor establishment selected for review. In addition to the scheduling letter, contractors will receive an ARRA notification letter notifying them that their establishment was scheduled using the ARRA scheduling procedures, and will offer compliance assistance. Construction contractors will receive a scheduling letter that includes notification that their compliance evaluation was scheduled using the ARRA scheduling procedures.

**6. My establishment recently underwent a compliance evaluation and has just procured an ARRA funded contract. Are we eligible for scheduling for a compliance evaluation under the ARRA procedures?**

*Supply and Service*

ARRA funded contractor establishments that have recently undergone a compliance evaluation scheduled using standard Federal Contractor Selection System (FCSS) procedures will be excepted from being scheduled and reviewed under ARRA procedures for six (6) months from the date of the compliance evaluation closure.

ARRA funded contractor establishments that have undergone a compliance evaluation scheduled using ARRA procedures will not be eligible for another evaluation using ARRA scheduling procedures. ARRA funded contractor establishments that have undergone an evaluation using ARRA scheduling procedures will also be excepted from scheduling for a compliance evaluation using standard FCSS procedures for 24 months from the date of closure of the evaluation using the ARRA procedures.

*Construction*

An ARRA funded or assisted construction contractor that has undergone an OFCCP review using non-ARRA scheduling procedures will be excepted from an OFCCP evaluation using ARRA procedures, in the same geographical area, for a period of 6 months.

ARRA funded construction contractors that have undergone a compliance evaluation scheduled in a geographical area using ARRA procedures will not be eligible for another evaluation in the same geographical area using ARRA scheduling procedures.

**7. My establishment has received an extended period of exception from OFCCP review as a result of receiving an EVE, EPIC, or Secretary's Award, or as a result of being a G-FIVE honoree. Will my establishment be subject to an ARRA review during the exception period?**



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No. Department of Labor Award winners and G-FIVE honorees are excepted from review under ARRA procedures for the full duration of their exception period.

**Pre-award Clearance Compliance Evaluations**

**1. Are all prospective Federal contractors subject to a pre-award clearance evaluation?**

No. Only prospective Federal contractors receiving a non-construction contract award of \$10 million or more are subject to a pre-award clearance evaluation, unless they have undergone a compliance evaluation and been found to be in compliance with OFCCP regulations within the past 24 months. Any contractor, including any ARRA funded contractor, that has been found to be in compliance within the past 24 months, is not subject to a pre-award clearance evaluation.

**2. How do contracting officers request pre-award clearance?**

Contracting officials must make a request for EEO Clearance to OFCCP. The pre-award request should be submitted to the OFCCP regional office with coverage of the area where the contract's place of performance is to occur. If the performance of a contract is expected to take place in several OFCCP regions, a separate pre-award request should be submitted to each applicable regional office. For a list of OFCCP regional offices, and regional coverage areas, please visit <http://www.dol.gov/esa/ofccp/contacts/ofcpkeyp.htm>.

To expedite the Pre-Award Clearance request process, contracting officers are encouraged to provide the following information:

- Name, address, point of contact, and telephone number of the proposed contractor;
- Name, address, point of contact, and telephone number of each proposed first-tier subcontractor(s) with proposed subcontract(s) of \$10 million or more;
- Anticipated date of award;
- Place(s) of contract or subcontract performance;
- Estimated dollar amount of contract or subcontract ( \$10 million or more, including options);
- Proposed contract and/or solicitation number;
- Name, address, point of contact, telephone number, and e-mail address of the contracting office/agency.
- Indicate if funding for this contract is pursuant to the American Recovery and Reinvestment Act (ARRA).



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**3. What does a pre-award compliance evaluation entail?**

If the prospective contractor or subcontractor is also a current Federal contractor, OFCCP will review the contractor's compliance with Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973 (Section 503), as amended, and the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) as amended. The review may require the submission of relevant employment data and an on-site review.

If the prospective contractor or subcontractor does not have any other Federal contracts, OFCCP will provide on-site technical assistance and ensure that the company understands and will be able to comply with all of the equal opportunity obligations of a federal contractor.

**4. As an agency contracting official, should I check the National Pre-award Registry before I request pre-award clearance of an establishment? How do I do this?**

Prior to requesting a pre-award clearance, an agency contracting official should check OFCCP's National Pre-Award Registry online at [http://www.dol-esa.gov/preaward/pa\\_reg.html](http://www.dol-esa.gov/preaward/pa_reg.html). The Registry lists those Federal contractor establishments that have been found to be in compliance with OFCCP regulations within the past two years. If the contractor establishment is found on the Registry, the agency contracting official does not need to request OFCCP pre-award clearance.

The Registry provides information only for the specific "Contractor Facility(s)" requested. It does not provide information on the parent company or other company locations that have not been reviewed within the past two years. If a given facility is found to be "In Compliance", this does not imply that other facilities under the same parent company are also in compliance.

**5. As an agency contracting official, should I request pre-award clearance if the base year of a contract is less than \$10 million, but the contract contains option years that could increase the contract amount to more than \$10 million?**

Yes. Pre-award clearance should be requested for contracts where the initial award (base year) is less than \$10 million, but options to the contract will exceed \$10 million.

**6. The contract has multiple places of performance. Which OFCCP office should I submit the pre-award clearance request to?**



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If the performance of a contract is expected to take place in several OFCCP regions, a separate pre-award request should be submitted to each applicable regional office. For a list of OFCCP regional offices, and regional coverage areas, please visit <http://www.dol.gov/esa/ofccp/contacts/ofcpkey.htm>.

**Supply and Service Compliance Evaluations**

**1. How was I selected for a compliance review under ARRA scheduling procedures?**

Similar to OFCCP's Federal Contractor Selection System (FCSS), OFCCP uses an administratively neutral selection system that uses multiple information sources to identify ARRA funded Federal contractor establishments for evaluation. The ARRA-FCSS process may include the analysis of external Federal contract databases to better establish jurisdictional coverage.

Once identified by the ARRA-FCSS, establishments selected for evaluation appear on a computer-generated list developed by the OFCCP National Office. To ensure consistent and fair application of OFCCP's administratively neutral selection process, contractors are selected for review from the list in sequential order. If an office rejects an establishment for evaluation, it must identify the reason for the rejection. Information regarding the selection or rejection of contractor establishments is maintained by OFCCP in a centralized electronic database.

**2. Do the ARRA scheduling procedures limit the number of establishments per contractor that can be selected for review at the same time?**

No. While the FCSS scheduling procedures limit the number of establishments per contractor that can be scheduled for a compliance evaluation to 25 new evaluations during a scheduling cycle, the ARRA scheduling procedures contain no such limitation. Therefore the ARRA-FCSS will not limit the number of compliance evaluations scheduled to a set number of establishments per contractor.

**Construction Compliance Evaluations**

**1. How do I notify OFCCP of an award of an ARRA funded construction contract?**

Agency contracting officers, applicants for or recipients of Federal financial assistance and current contractors are required to give written notice to OFCCP within 10 working days of award of a construction contract or subcontract in



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excess of \$10,000. See 41 CFR 60-4.2(c) and (d). The notice should be sent to the OFCCP Regional office in which the work will be performed, and should include:

- The name, address and telephone number of the contractor or subcontractor
- Employer Identification Number (EIN)
- Dollar amount of the contract
- Estimated starting and completion dates of the contract or subcontract
- Contract number
- The geographical area(s) in which the contract or subcontract is to be performed; and
- If a prime contractor, a list of all known construction subcontracts of \$10,000 or more.

For a list of OFCCP Regional Offices and addresses, please see <http://www.dol.gov/esa/ofccp/contacts/ofcpkeyp.htm>.

**2. What does a construction compliance evaluation entail?**

The major focus of a construction compliance review will be the contractor's trade workforce in the geographical area(s) where the contract work is being performed, and its good faith efforts to achieve equal employment opportunity. This review should consider the contractor's total onsite construction workforce in the area, including those employees working on other construction projects, whether or not those other projects are federally funded or federally assisted. For more information on how to prepare for a construction compliance evaluation, please refer to the Technical Assistance Guide for Federal Construction Contractors at <http://www.dol.gov/esa/ofccp/TAGuides/consttag.pdf>.

**3. How was I selected for a construction compliance review under the ARRA scheduling procedures?**

OFCCP uses an administratively neutral selection system to identify ARRA funded Federal and federally assisted construction contractors for evaluation. As OFCCP identifies ARRA funded construction projects, the projects will be placed on a list developed by the OFCCP National Office. The list will then be sorted by location and provided to the OFCCP offices where the projects are located. The contractors working on the projects selected for review will be selected for evaluation based on specific neutral criteria.

**4. I am a prime contractor. I manage the project, but most of the actual construction is performed by subcontractors. I just received a scheduling letter. What should I do?**



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Contact the OFCCP office that issued the scheduling letter to inform them of the subcontractors performing the actual construction work. Provide OFCCP with the names, addresses and sizes of all the construction subcontractors. The data on the subcontractor should include the number of employees (existing or yet to be hired) that are or will be working on the project and the dollar value of the subcontracts.

**5. What is a Mega Project?**

A Mega Project is a construction project which: 1) is directly federally-funded or federally-assisted; 2) has a contract value of \$50 million or more; 3) is expected to have significant economic and/or employment impact on a community; and 4) will last more than one year.

In light of their size and complexity, OFCCP works closely with Mega Project participants to assist them in complying with their EEO obligations. OFCCP will provide pre-construction technical assistance to the Mega Project's prime contractor and major subcontractors, coordinate the establishment of an oversight committee to monitor and promote equal opportunity activities, facilitate the introduction of contractors with community and labor groups, and provide technical assistance to the contractor and subcontractors in preparing comprehensive staffing data reports.

**6. Is a compliance evaluation of a Mega Project different from other construction reviews?**

Mega Projects will be scheduled for review based upon the terms agreed to by OFCCP and the contractor. Consequently, OFCCP may periodically conduct compliance evaluations of the prime contractor and its subcontractors as the project progresses to ensure that contractors are complying with their EEO obligations throughout the life of the project.

**FOR MORE INFORMATION ON OFFCP'S ARRA PROGRAM VISIT**  
**[http://www.dol.gov/esa/ofccp/arra\\_web.html](http://www.dol.gov/esa/ofccp/arra_web.html)**