



TRANSMITTAL

**U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Office of Federal Contract
Compliance Programs
Washington, D.C. 20210**

NUMBER: 240

DATE: December 12, 2000

FCCM Notice/CH 8

1. **SUBJECT:** Mandatory enforcement clause in conciliation agreements.

2. **PURPOSE:** To incorporate a revision in the mandatory enforcement clause in conciliation agreements (41 CFR 60-1.34(a)(4) as published in the OFCCP final rule in the Federal Register on August 19, 1997.

3. **BACKGROUND:** OFCCP's regulations at 41 CFR Part 60-1 implementing Executive Order 11246, as amended, were revised by a final rule published in the Federal Register on August 19, 1997 (62 Fed. Reg. 44173). This Notice incorporates a revision in Chapter 8 of the Federal Contract Compliance Manual that concerns the mandatory enforcement clause in conciliation agreements.

The final rule clarifies that in enforcement proceedings involving alleged violations of a conciliation agreement, OFCCP may seek enforcement of the agreement itself without presenting proof of the underlying violations resolved by the agreement. This provision, which reflects OFCCP's current practice and is consistent with OFCCP's Section 503 rule published in the Federal Register on May 1, 1996, is intended to confirm that OFCCP need not litigate claims that have already been resolved through the agreement.

OFCCP is currently developing a Directive to make additional revisions to the Manual necessitated by the August 19, 1997 final rule. That Directive will be issued at a later date.

4. **INSTRUCTIONS:** From Manual, Chapter 8, remove and discard page 8-37/8-38 and insert in its place the attached revised page 8-37/8-38. Please note that page 8-37 is unchanged.

The change made by this notice is indicated by a vertical line.

5. **OBSOLETE DATA:** Page 8-37/8-38 of Manual Chapter 8
6. **ATTACHMENT:** Revised page 8-37/8-38
7. **DISTRIBUTION:** A, B, C
8. **EXPIRATION:** This Notice expires when implemented and may be discarded or retained for reference, at your option.

(signed)

Dec. 12, 2000

SHIRLEY J. WILCHER
Deputy Assistant Secretary
for Federal Contract Compliance

Date

Requires a change in a collective bargaining agreement (CBA) between the contractor and a labor union or requires the award of retroactive seniority where seniority is governed by a CBA and the union declines to sign the CA (see Sections 7F06(f) and 8C04(b)).

**** For employee interviews, "normal business hours" means the hours during which the employees to be interviewed are at work (e.g., evening hours if the employees work on an evening shift).***

4. The provisions of this agreement will become part of [name of contractor]'s written AAP. Subject to the performance by [name of contractor] of all promises and representations contained herein and in its AAP, all named violations in regard to the compliance of [name of contractor] with all OFCCP programs will be deemed resolved. However, [name of contractor] is advised that the commitments contained in this Agreement do not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.
5. [Name of contractor] agrees that OFCCP may review compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witness, and examine and copy documents, as may be relevant to the matter under investigation and pertinent to [name of contractor]'s compliance. [Name of contractor] shall permit access to its premises during normal business hours* for these purposes.
6. Nothing herein is intended to relieve [name of contractor] from the obligation to comply with the requirements of Executive Order 11246, as amended, and/or Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), and implementing regulations, or any other equal employment statute or executive order or its implementing regulations.
7. [Name of contractor] agrees that there will be no retaliation of any kind against any beneficiary of this Agreement or against any person who has provided information or assistance, or who files a complaint, or who participates in any manner in any proceedings under Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212).

** If a DD is signing, change Regional to District, and say "...unless the Regional Director or Director..."*

*** If the CA involves back pay, the back pay should be disbursed following this 45-day period*

**** Paragraph 9 is called the MANDATORY ENFORCEMENT CLAUSE. This clause implements 41 CFR 60-1.34, which requires that when OFCCP concludes that a CA has been violated, a 15-Day Notice will be issued (unless irreparable injury is involved, see Section 8H02) and if, during the 15-day period, the contractor cannot demonstrate in writing that it did not violate the CA, enforcement proceedings may be initiated without issuing a Show Cause Notice.*

8. This agreement will be deemed to have been accepted by the Government on the date of the signature by the Regional* Director for OFCCP, unless the Deputy Assistant Secretary, OFCCP, indicates otherwise within 45 days of the Regional* Director's signature on this Agreement.**

9.*** If at any time in the future, OFCCP believes that [name of contractor] has violated any portion of this Agreement during the term of this Agreement, [name of contractor] will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide [name of contractor] with 15 days from receipt of the notification to respond in writing, except where OFCCP alleges that such a delay would result in irreparable injury.

Enforcement proceedings for violation of this agreement may be initiated at any time after the 15-day period has elapsed (or sooner, if irreparable injury is alleged) without issuing a Show Cause Notice.

Where OFCCP believes that [name of contractor] has violated this Conciliation Agreement, OFCCP may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.