



TRANSMITTAL

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

Number: 245

Date: May 1, 2001

FCCM Notice/CH 6

1. **SUBJECT**: Change in Operating Procedures regarding Class Complaints and Concurrent Compliance Evaluations.

2. **PURPOSE**: To transmit a change in operating procedures regarding class complaints and concurrent compliance evaluations.

3. **ORIGINATOR**: Division of Program Operations

4. **BACKGROUND**: OFCCP's current practices require that full compliance reviews be conducted whenever a complaint appears to involve systemic or class type discrimination and the contractor's establishment has not been evaluated in the two years prior to the filing of the complaint (Federal Contract Compliance Manual, Chapter 6, Section 6F00(a)). With the issuance of this directive this practice is changed. A compliance review is no longer required in this situation. Rather, the District Director will have the option of doing a full or focused review at his or her discretion. However, if a decision is made to conduct a compliance evaluation, in order to open either a full compliance review or a focused review in conjunction with a class complaint investigation, the Regional Office must submit a written request for approval from the Director, Division of Program Operations.

5. **FILING INSTRUCTIONS**: From Manual Chapter 6, remove and discard page 6-5/6-6 and insert in its place the attached revised page 6-5/6-6. Please note that page 6-5 is unchanged.

The changes made in this Notice are indicated by vertical lines.

6. **OBSOLETE DATA:** Page 6-5/6-6 of Manual Chapter 6
7. **ATTACHMENT:** Revised page 6-5/6-6
8. **DISTRIBUTION:** A, B (both hard copy and electronically); C (hard copy only).
9. **EXPIRATION DATE:** This Notice expires when implemented and may be discarded or retained for reference, at your option.

(signed)

HAROLD M. BUSCH
Acting Deputy Assistant Secretary
for Federal Contract Compliance

May 1, 2001

DATE

Figure 6-5. Also, notify the complainant by using the sample letter at Figure 6-6. The DO/AO should schedule the investigation as soon as possible.

- (e) Results of the Internal Review: At the end of the 60-day internal review period, if the DO/AO has not been informed of the results of the internal review, the CO should contact the contractor and the complainant to determine if there has been a resolution of the complaint satisfactory to the complainant.
- (f) Resolution of the Complaint: If the DO/AO is notified that the complaint has been resolved to the satisfaction of the complainant, every effort should be made to obtain written confirmation from the complainant and the contractor. Whether or not written confirmation is obtained, the DO/AO will confirm the notification by using the sample letters at Figures 6-7 and 6-8. The complaint case file may then be closed.
- (g) Complaint Not Resolved: If the DO/AO is notified that the internal review failed to reach a resolution satisfactory to the complainant, confirm this by using the sample letters at Figures 6-9 and 6-10. The DO/AO should schedule the investigation as soon as possible.

6E03 PROVIDING THE CONTRACTOR A COPY OF EXECUTIVE ORDER
AND OTHER SECTION 503/38 U.S.C. 4212 COMPLAINTS

- (a) General: This section describes the process of providing the contractor with a copy of the complaint in those circumstances which are not included in 6E02 above. All correspondence indicated below is to be sent certified mail, return receipt requested.
- (b) Notice to Contractor: Upon receiving the assigned complaint from the RO, the DO/AO will send a copy of the complaint to the contractor using the sample letter at Figure 6-11. Also, the complainant will be notified by using the sample letter at Figure 6-12. The DO/AO should schedule the investigation as soon as possible.
- (c) Resolution of the Complaint: If, as a result of the notice to the contractor, a resolution is achieved which is satisfactory to the complainant, follow the procedures in 6E02(f) above, with whatever modifications individual circumstances may dictate.

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6F THE INVESTIGATION

6F00 DISCRIMINATION

A complaint is merely an allegation of discrimination. The purpose of investigating an allegation of discrimination is to determine if in fact discrimination did occur. Unfairness, per se, is not equivalent to discrimination. See Chapter 7 for a detailed discussion of employment discrimination. The CO must exercise objectivity, reasoned thoughtfulness, and common sense in collecting and analyzing all available facts pertinent to each investigation. No two sets of fact situations are the same; each investigation must be conducted in an atmosphere of open-mindedness and fairness to both parties.

- (a) Relationship to Compliance Evaluations: Complaint investigations may be done with or without a compliance evaluation. The District or Area Office has the option of conducting either a full compliance review or a focused review whenever the complaint appears to involve systemic or class type discrimination.
- (b) Investigative Priority: In scheduling complaints for investigation, the DO/AO should take immediate action on any complaint alleging retaliation or irreparable injury for filing a complaint with OFCCP, or for assisting in an OFCCP compliance evaluation, complaint investigation, or enforcement action. (See 41 CFR 60-1.32, 60-250.69, and 60-741.69.) The DO/AO should also take immediate action on complaints from job applicants.
- (c) Authorization to open a full compliance review or focused review: To open a full compliance review or a focused review in conjunction with a class complaint investigation, the Regional Office must request, in writing, approval from the Director, Division of Program Operations.

6F01 THE INVESTIGATIVE PLAN

- (a) Purpose of Plan: Every complaint investigation should have a plan. The investigative plan serves as a checklist or road map for the conduct of the investigation. While every step along the way may not be identified, the plan should contain the major actions to be taken. Because each complaint is based on a unique set of factual circumstances, so too must the plan be tailored to the particular circumstances described in the complaint. It should be recognized that the plan is subject to modification based on new or revised information. Experience in some OFCCP offices has shown that a more useful and comprehensive plan results when the assigned CO has discussed the complaint with his/her supervisor or with other COs in a structured meeting.

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