



OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS



SUPPLY AND SERVICE CONTRACTORS TECHNICAL ASSISTANCE GUIDE





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Introduction

The Office of Federal Contract Compliance Programs (OFCCP) places a strong emphasis on providing compliance assistance for federal government contractors. OFCCP's compliance assistance comes in many forms. OFCCP produces infographics, develops quick reference guides, answers frequently asked questions, and regularly participates in educational seminars. All of the agency's compliance assistance efforts help contractors strive for equal employment opportunity, or EEO, as mandated by the laws and regulations that OFCCP enforces.

OFCCP intends for this Technical Assistance Guide (guide) to serve as a valuable self-assessment tool for contractors to review the practices they have in place to eliminate discrimination and achieve their EEO goals. At a minimum, this guide aims to help federal contractors meet all of their obligations required under the law. It also highlights best practices and provides useful references. This guide addresses the following key objectives for federal contractors:

- Understand legal obligations under the laws OFCCP enforces.
- Comply with federal EEO laws even in the absence of a scheduled compliance evaluation by OFCCP.
- Develop written affirmative action programs (AAP) under Executive Order 11246, Section 503 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, when appropriate.
- Prepare for an OFCCP compliance evaluation.

OFCCP developed this guide specifically for federal supply and service contractors. In this guide, "federal supply and service contractors" or "contractors" refers to both contractors and subcontractors unless otherwise specified. Use of the word "contract" in this guide may refer to either a contract or a subcontract, but the term "subcontract" is used when necessary to the context.

Certain requirements in this guide provide potentially less burdensome compliance options for small contractors. OFCCP notes these options throughout the guide. Furthermore, the guide contains a checklist for small contractors in Appendix A, along with a similar checklist for first-time contractors in Appendix B.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. It does not create new legal requirements or change current legal requirements. The legal requirements related to equal employment opportunity that apply to federal supply and service contractors are contained in the statutes, executive orders, and regulations cited in the guide. Every effort has been made to ensure that the information contained in the guide is accurate and up to date.

OFCCP's Mission

OFCCP protects workers, promotes diversity, and enforces the law. OFCCP holds those who do business with the federal government responsible for complying with the legal requirements to take affirmative action and not discriminate on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin, disability, or status as a protected veteran. In addition, the agency's regulations prohibit contractors from discharging or otherwise discriminating against applicants or employees who inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations.

OFCCP Responsibilities

- Help federal contractors comply with regulatory requirements and understand OFCCP's compliance evaluation process.
- Conduct complaint investigations and compliance evaluations of federal contractors, including examining their personnel policies, actions, and practices.
- Connect federal contractors with the Department of Labor's employment and training programs, outside organizations, and recruitment sources that help employers identify and recruit qualified employees.
- Negotiate agreements, including formal conciliation agreements, with federal contractors found to be in violation of the laws that OFCCP enforces.
- Monitor federal contractors' progress in fulfilling the terms of conciliation agreements by reviewing periodic compliance reports.
- Recommend enforcement actions to the Solicitor of Labor, when necessary.

Overview of EEO Legal Authorities

OFCCP administers and enforces three equal employment opportunity laws that prohibit federal contractors from discriminating against applicants and employees, and require them to take affirmative action. Under these laws, contractors may not harass, threaten, coerce, or discriminate against any individual who files a complaint, opposes an act or practice believed to violate one of the laws, participates in an activity related to the administration of the laws (such as a compliance evaluation), or exercises any other right protected by the laws.

Laws OFCCP Enforces

Executive Order 11246, as amended (Executive Order)

This law prohibits employment discrimination based on race, color, religion, sex, sexual orientation, gender identity, and national origin. Additionally, contractors must take affirmative action to ensure equal employment opportunity in their employment processes. Contractors also must not discriminate against applicants or employees because they inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations. Executive Order 11246 applies to contractors who meet the following contract thresholds:

- A federal supply and service contract or subcontract of over \$10,000.
- Two or more federal supply and service contracts or subcontracts of less than \$10,000 that, when added together, total more than \$10,000 within any 12-month period or can reasonably be expected to total more than \$10,000 during that time.

Section 503 of the Rehabilitation Act of 1973, as amended (Section 503)

Section 503 prohibits employment discrimination on the basis of disability and requires federal contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. Contractors covered by Section 503 must also make reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability unless the contractor can demonstrate that the accommodation would impose an undue hardship on its business. Section 503 covers federal contractors with at least one government contract in excess of \$15,000.

Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA)

VEVRAA prohibits employment discrimination against protected veterans (disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and Armed Forces Service Medal veterans). The law also requires contractors to take affirmative action to employ and advance in employment protected veterans. VEVRAA applies to federal contractors with at least one government contract of \$150,000 or more.

OFCCP's Regulations

OFCCP implements these three laws through regulations published in title 41, chapter 60 of the Code of Federal Regulations (CFR), available electronically at www.ecfr.gov. Parts 60-1 through 60-50 implement Executive Order 11246. Part 60-300 implements VEVRAA, and part 60-741 implements Section 503. For example, 41 CFR part 60-2 contains the affirmative action requirements that are specific to federal supply and service contractors under Executive Order 11246.

OFCCP shares enforcement responsibilities with other federal agencies in the administration of the following laws:

- Title I of the Americans with Disabilities Act of 1990 (ADA), as amended, which prohibits employment discrimination by employers with 15 or more employees against qualified individuals on the basis of disability. The Equal Employment Opportunity Commission (EEOC) has primary authority for enforcing the ADA, but OFCCP is authorized to act as EEOC's agent in processing, investigating, and resolving ADA complaints falling within the overlapping jurisdiction of Section 503 and Title I of the ADA. The regulations implementing these procedures are at 41 CFR Part 60-742.
- Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination on the basis of race, color, religion, sex, and national origin. In many instances, employment discrimination claims against a government contractor can be brought under both Executive Order 11246 and Title VII. While EEOC has primary authority for enforcing Title VII, per an MOU renewed in 2011, OFCCP is authorized to act as EEOC's agent in processing, investigating and resolving the Title VII component of complaints filed with OFCCP under Executive Order 11246 that allege discrimination of a systemic or class nature on the basis of race, color, religion, sex or national origin.

Legal Notices and Contract Clauses

Executive Order 11246, Section 503 and VEVRAA each requires that all federal agencies include an equal opportunity clause in contracts and subcontracts. The clause informs contractors of their nondiscrimination and affirmative action requirements. Federal supply and service contractors will find each law's equal opportunity clause in their contracts, in OFCCP's regulations, and in Appendix I: Equal Opportunity Clauses. Even if the government contract does not include the required clauses, the obligations still apply under the law.

EQUAL OPPORTUNITY CLAUSES

Executive Order 11246

41 CFR 60-1.4(a)

Section 503

41 CFR 60-741.5

VEVRAA

41 CFR 60-300.5

Two General Rules

For a federal construction contractor to be in compliance with its EEO obligations, there are two general rules.

1. Do not discriminate against applicants or employees based on any of the categories protected by the laws described above.
2. Take affirmative action:
 - a. To ensure equal employment opportunity without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - b. To employ and advance in employment qualified individuals with disabilities and qualified protected veterans.

Do Not Discriminate

Contractors must not discriminate against applicants or employees. This requirement lies at the core of OFCCP's laws, which ban discrimination against applicants and employees on the following bases:

- Race
- Color
- Religion
- Sex
- Sexual orientation
- Gender identity
- National origin
- Protected veteran status
- Disability
- Discussing, disclosing, or inquiring about one's compensation or the compensation of others, subject to certain limitations explained below, in the section on Pay Transparency in Federal Contracting

Unlawful employment discrimination shows itself in many forms. It may be discrimination against an individual, or it may be systemic discrimination against a group of individuals who share a common protected characteristic, such as national origin. It may occur through the intentional action of an employer (disparate treatment discrimination), such as refusing to hire an applicant because of their religion. It may also occur when a contractor's seemingly neutral policy or practice negatively affects members of a particular group and is not justified by business

necessity and job-relatedness (disparate impact discrimination). For example, a contractor may screen applicants with strength or agility requirements that exceed the actual requirements necessary to perform the job in question and that disqualify substantially more women than men. Another example that could present disparate impact discrimination is a contractor that relies on “word-of-mouth” recruitment or “tap-on-the-shoulder” promotions that have an adverse impact on members of a particular racial or ethnic group. Unless the contractor can show that the recruitment and promotion practices are related to the job and necessary for the business, then the contractor may be discriminating.

This guide does not address every possible scenario of discrimination. However, following are several more illustrations of unlawful employment discrimination.

- Denial of a reasonable accommodation for a qualified disabled veteran when providing the accommodation would not cause an undue hardship on the contractor.
- Harassment of an employee because of their sexual orientation.
- Refusal to hire applicants because they are transgender.
- Preferring applicants of a particular color or national origin.
- Promoting only members of a particular race into higher-paying positions.

Pay Transparency in Federal Contracting

Executive Order 11246 promotes pay transparency in federal contracting by banning policies that punish employees for talking about pay. Under the Executive Order, it is unlawful discrimination for contractors to terminate or otherwise take adverse action against employees or job applicants for discussing, disclosing, or inquiring about their compensation. This worker protection also applies when an applicant or employee discusses, discloses, or inquires about the compensation of other employees, except in certain circumstances. For those circumstances, OFCCP’s regulations provide contractors with two types of defenses for taking an adverse employment action. These defenses are included in the regulations at 41 CFR 60-1.35(a) and (b) and are explained below.

Workplace Rule Defense

Contractors may take adverse action against an employee who violates a general “workplace rule” so long as the rule or policy does not prohibit employees or applicants from discussing or disclosing compensation information. Also, the general workplace rule or policy must be applied uniformly and consistently for it to be a successful defense. Examples of “workplace rules” may include rules on the use of leave and the length of breaks.

Essential Job Functions Defense

Contractors may also take adverse action against an employee who:

- Has access to the compensation information of other employees or applicants as part of their essential job functions, and
- Discloses the information to individuals who do not otherwise have access to it.

This defense does not apply if the employee discloses the compensation information for the following reasons.

- To respond to a formal complaint or charge.
- To further an investigation, hearing, or action, including an investigation conducted by the contractor.
- To furnish the information consistent with the contractor's legal duty.

A job function may be considered essential for purposes of the Pay Transparency defense if either statement below is true.

- Access to compensation information is necessary to perform that function or another routinely assigned business task.
- The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

Take Affirmative Action

Contractors must also take specific affirmative actions to ensure equal employment opportunity under the laws that OFCCP enforces. For all covered contractors, these affirmative actions include publishing and posting notices and EEO policies that make known the contractor's affirmative commitment to equal employment opportunity.

In addition, contractors that have 50 or more employees and meet specific contract dollar thresholds are required to develop and maintain written AAPs under each law. An AAP is a management plan for ensuring equal employment opportunity. It establishes the policies, practices, and procedures that contractors implement to ensure that all qualified applicants and employees receive equal opportunity in recruitment, selection, advancement, and other benefits and privileges of employment. For details about the written AAP requirement under Executive Order 11246, please go to page 16. The requirements under Section 503 and VEVRAA are addressed on page 47.

Required Postings, Listings, and Notices

- The *EEO is the Law* poster (and supplement) and the Pay Transparency Nondiscrimination Provision to inform applicants and employees about their protections from discrimination under federal law.
- Notice to any unions with which the contractor has a collective bargaining agreement of the contractor's equal opportunity obligations.
- Notice to job seekers that the employer is an equal opportunity employer, provided by using taglines in job advertisements.
- Notice to OFCCP by the contractor that it awarded a construction subcontract of more than \$10,000.
- Notice to subcontractors of their nondiscrimination and affirmative action obligations, provided by incorporating equal opportunity clauses into subcontracts and purchase orders.

Though not required, OFCCP encourages contractors to post a policy statement letting applicants and employees know that they will not discriminate against spouses of protected veterans, or anyone with a family, business, social, or other relationship or association with a protected veteran, and will safeguard the fair and equitable treatment of these individuals with regard to all employment actions and prohibit harassment of applicants and employees because of their relationship or association with a protected veteran. Appendix T includes a sample policy statement.

- Under Section 503 and VEVRAA, notice that those AAPs are available for review by applicants and employees upon request.
- Under VEVRAA only, notice to the appropriate employment service delivery system that the employer is a federal contractor and that it wants priority referrals of veterans.

EEO and Pay Transparency Postings and Notices

Contractors must post these notices:

- “EEO is the Law” Poster
- “EEO is the Law” Poster Supplement
- Pay Transparency Nondiscrimination Provision

These postings inform applicants and employees of their rights protected by OFCCP, and procedures for filing complaints. Federal agency contracting officers should provide contractors with the necessary posters. They are also available in different formats on the OFCCP website and upon request from OFCCP. These notices must be in an accessible format for individuals with disabilities.

Required Postings, Listings, and Notices

- ☐ The “EEO is the Law” poster (and supplement) and the Pay Transparency Nondiscrimination Provision to inform applicants and employees about their protections from discrimination under federal law.
- ☐ Notice to any unions with which the contractor has a collective bargaining agreement of the contractor’s equal opportunity obligations.
- ☐ Notice to jobseekers that the employer is an equal opportunity employer, provided by using taglines in job advertisements.
- ☐ Notice to OFCCP by the prime contractor that it awarded a construction subcontract in excess of \$10,000.
- ☐ Notice to subcontractors of their nondiscrimination and affirmative action obligations, provided by incorporating equal opportunity clauses into subcontracts and purchase orders.
- ☐ Under VEVRAA only, notice to the appropriate employment service delivery system that the employer is a federal contractor and that it wants priority referrals of veterans.

EEO is the Law Poster

Every employer covered by EEO laws is required to place the “Equal Employment Opportunity is the Law” poster prominently on its premises, where it can be readily seen by employees and applicants for employment. Electronic posting of the notice (posted on the company’s intranet or emailed to employees) is acceptable for employees who do not work at a physical location of the company. If the company has an electronic application process, a contractor must use an electronic posting that is stored with or part of the electronic application to notify applicants of their rights.

EEO is the Law Supplement

OFCCP produced a mandatory supplement to the “EEO is the Law” poster that contractors are required to use until the “EEO is the Law” poster is updated to be consistent with OFCCP’s protections. It, too, must be accessible to all applicants and employees as described above.

Pay Transparency Nondiscrimination Provision

OFCCP also requires contractors to post the Pay Transparency Nondiscrimination Provision and include it in employee handbooks and manuals to notify applicants and employees of their rights to discuss, disclose, and inquire about compensation and compensation information. The posting requirement can be accomplished by posting the provision electronically or by posting copies of the provision in conspicuous places available for employees and applicants. On its website, OFCCP provides a formatted version for posting that includes the OFCCP logo and contact information, and an unformatted version for inclusion in employee handbooks and manuals.

Availability of Section 503 and VEVRAA AAPs for Review

Contractors subject to the AAP requirements of Section 503 and VEVRAA must post a notice that those AAPs are available for review by applicants and employees upon request. The notice must identify the appropriate contact information as well as times of availability. Like other notices, it must be posted in conspicuous places available to employees and applicants.

Notice to Unions

If a contractor has a collective bargaining agreement or other contract with a union, then the contractor must give notice to the union that the contractor is bound by the laws OFCCP enforces and is committed to taking affirmative action and not discriminating against applicants and employees on any protected bases. A sample notice that would satisfy this OFCCP requirement is in Appendix G: Sample Notice to Unions.



Job Advertisement Taglines

OFCCP requires contractors to include notices in all solicitations and advertisements for employees that qualified applicants will be considered without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. The use of “taglines” in job advertisements is the way contractors provide that notice.

Executive Order 11246

- A contractor can use the phrase “equal opportunity employer” or “EOE” as a substitute for listing all the protected bases.
- If a contractor wishes to list any of the bases protected by Executive Order 11246 in its tagline, it must list all of them.

Section 503

- Simply using “D” is not an adequate substitute for “disability” in a tagline.
- For those protected by Section 503, the tagline should at a minimum state “disability” so jobseekers will clearly understand the tagline. This is true even if the phrase “equal opportunity employer” or “EOE” is used as a substitute for listing all the protected bases under Executive Order 11246.

VEVRAA

- Simply using “V” is not an adequate substitute for “veteran” or “vet” in a tagline.
- For those protected by VEVRAA, the tagline should at a minimum state “vet” so that jobseekers will clearly understand the tagline. This is true even if the phrase “equal opportunity employer” is used to substitute for listing all the protected bases under Executive Order 11246.

Listing Jobs with the Employment Service Delivery System

A contractor that is covered by VEVRAA must list its employment openings with the appropriate employment service delivery system (ESDS). The term “employment service delivery system” is defined at 41 CFR 60-300.2(j). In general, the term refers to local American Job Centers (one-stop centers) and state workforce agencies. Listing these employment openings is one type of affirmative action the contractor takes to recruit and hire qualified veterans.

For questions about the appropriate manner and format for providing job listing information, please contact the ESDS.

Examples of Acceptable EEO Taglines

Executive Order 11246

Option 1: EOE

Option 2: Equal Opportunity Employer

Option 3: All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

Executive Order 11246 and Section 503

Option 1: EOE including disability

Option 2: Equal Opportunity Employer, including disability

Option 3: EOE: race/color/religion/sex/sexual orientation/gender identity/national origin/disability

Option 4: All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, or disability.

Executive Order 11246, Section 503, and VEVRAA

Option 1: EOE including disability and vet

Option 2: Equal Opportunity Employer, including disability and protected veteran status

Option 3: EOE: race/color/religion/sex/sexual orientation/gender identity/national origin/disability/vet

Option 4: All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran.

Contractors must list all employment openings except the following:

- Executive and senior management positions.
- Positions that will be filled from within the contractor's organization, meaning openings for which no consideration will be given to persons outside the contractor's organization, including openings which the contractor proposes to fill from regularly established "recall" lists.
- Positions lasting three days or less.

Contractors have immediate actions to take upon becoming subject to VEVRAA for the first time, and ongoing actions to take for as long as they remain subject to VEVRAA.

Immediate Actions	Ongoing Actions
• Notify the ESDS in each state where it has establishments that it is a federal contractor. • Notify each ESDS that it desires priority referral of protected veterans for job openings. • Provide each ESDS with the name and address of each hiring location within the state, as well as the contact information of the contractor official responsible for hiring at each location. • List all employment openings that exist at the time of the execution of the federal contract with the appropriate ESDS where the opening exists, including employment openings not generated by the federal contract and openings at locations other than the establishment where the contract work will be performed. Submit the listing information in a manner and format permitted by the ESDS so that it can access and use the information to provide priority referral of protected veterans and make the job listings available to job seekers.	• List all employment openings with the appropriate ESDS when openings occur throughout the performance of the contract. Perform this listing at least concurrently with the use of any other recruitment source or effort. Submit the listing information in a manner and format permitted by the ESDS. • If any of the initially disclosed information about hiring locations and contacts changes, update the appropriate ESDS with current information. The contractor can complete this when it next lists a position. • Maintain records of job listings, or require that any third-party provider of the listing service maintain the records. Remember that use of a third-party provider does not relieve a contractor of its recordkeeping obligations.

Notification to OFCCP of Construction Contract Award

Federal contractors are required to give written notice to OFCCP within 10 working days of awarding a construction subcontract of more than \$10,000. Applicants for construction contracts and federal agency contracting officers are also responsible for providing this notice. This notice requirement is in OFCCP's construction regulations at 41 CFR 60-4.2(c).

The notification must be submitted to the OFCCP Regional Office that covers the geographical area in which the work will be performed. OFCCP developed a form for providing the notice, available in Appendix J: Construction Contract Award Notification Requirement.

Mandatory Notices in Bids and Contracting Documents

Contractors must include equal opportunity clauses in their subcontracts and purchase orders. There is an equal opportunity clause for each of the laws OFCCP enforces. The full equal opportunity clause for each law appears in OFCCP's regulations and is available in Appendix I: Equal Opportunity Clauses. A sample for how to incorporate all three clauses by reference is available in Appendix H: Equal Opportunity Clauses – Incorporation by Reference.

These clauses include the general requirements not to discriminate and to take affirmative action. They also contain many of the other posting and notice requirements discussed in this guide, such as listing employment openings and displaying the EEO poster and pay transparency notice. Contractors must include or reference these equal opportunity clauses in all subcontracts and purchase orders that meet the contract dollar thresholds (in excess of \$10,000 for Executive Order 11246; in excess of \$15,000 for Section 503; and \$150,000 or more for VEVRAA).

- Equal Opportunity Clause (Executive Order 11246) at 41 CFR 60-1.4(a)
- Equal Opportunity Clause (Section 503) at 41 CFR 60-741.5(a)
- Equal Opportunity Clause (VEVRAA) at 41 CFR 60-300.5(a)

Mandatory Recordkeeping

Being a federal contractor carries with it the responsibility to retain personnel and employment records. It is necessary for contractors to maintain these records not only to be in compliance with OFCCP's recordkeeping requirements but also to demonstrate compliance with their EEO obligations. Without sufficient recordkeeping practices, a contractor will not be able to show OFCCP, for example, that it took all the required affirmative action steps.

What Records to Keep

Contractors must keep records about their entire workforce. All personnel or employment records made or kept by a contractor must be preserved.

Records that contractors must keep include, but are not limited to, documents pertaining to hiring, assignment, promotion, demotion, transfer, layoff, termination, rates of pay or other terms of compensation, selection for training and apprenticeship, job postings, job advertisements,

Recordkeeping requirements for federal contractors can be found in OFCCP's regulations at 41 CFR 60-1.12(a), 60-741.80 and 60-300.80. Contractors must also comply with the Uniform Guidelines on Employee Selection Procedures, which are published at 41 CFR Part 60-3.

Notices for Construction Bids and Subcontracts

Supply and service contractors who subcontract for construction work under the federal contract must contain two additional formal notices in bids and contracting documents for the construction subcontracts:

- Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) at 41 CFR 60-4.2(d)
- Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) at 41 CFR 60-4.3(a)

There are different versions of the Equal Opportunity Clauses for federally assisted construction subcontracts:

- Equal Opportunity Clause (Executive Order 11246) at 41 CFR 60-1.4(b)
- Equal Opportunity Clause (Section 503) at 41 CFR 60-741.5(b)
- Equal Opportunity Clause (VEVRAA) at 41 CFR 60-300.5(b)

Use of a third-party vendor to recruit, screen or select applicants.

The federal contractor or subcontractor remains responsible for complying with OFCCP's recordkeeping requirements when using a third-party vendor to recruit, screen or select applicants. When using a recruiter for hiring, the contractor may either maintain the records itself or have the third-party vendor maintain the required records. During a compliance evaluation or complaint investigation, the records must be available to OFCCP in a readable format no matter who maintained them.

applications, resumes, tests, test results, and job interview notes. Some records must be kept in a confidential medical file apart from the applicant's file or employee's personnel file, such as results of any physical examinations and records relating to requests for reasonable accommodation. For more examples of records to keep, see Appendix M.

For each record, contractors must at minimum include the race, ethnicity, and gender for each employee, and where possible, each applicant and internet applicant. To comply with OFCCP's recordkeeping requirements, contractors may use the race and ethnicity categories included in OFCCP's regulations or the categories required for the Employer Information Report EEO-1 (EEO-1 Report). For more information on the EEO-1 Report, see page 69.

Invitation to Self-Identify

Contractors covered by Executive Order 11246 must invite applicants to identify their sex, race, and ethnicity. OFCCP does not mandate a specific time in the selection process when these applicant demographic data must be requested, only that applicants must be invited to provide the data before the contractor makes a job offer. The following guidelines will assist contractors to be in compliance.

- Solicitation of demographic information should be made as early in the application process as possible. Contractors should not wait until after assessing basic qualifications or at the interview stage to solicit the information.
- Contractors are required to solicit demographic information from all applicants. The invitation should state that the submission of such information is voluntary.
- Once a contractor determines when to invite applicants to provide demographic data, it must give all applicants the same opportunity.
- All demographic data must be preserved, including demographic data gathered from social and professional networking websites.
- Contractors may use post-employment records or visual observation when an individual declines to self-identify.
- Demographic data related to disability and veteran status is confidential and must be maintained in a file separate from medical and other personnel files.

Contractors subject to Section 503 and VEVRAA must also invite applicants to self-identify as individuals with disabilities or as protected veterans, respectively, during the pre-offer stage of the selection process. Additional requirements regarding invitations to self-identify exist under Section 503 and VEVRAA. The requirements are detailed below in the sections on Section 503 and VEVRAA AAPs. More information on recording demographic data is also available in Appendix M: Recording Demographic Data.

Race and Ethnicity Categories

OFCCP Regulations

African-American/Black, Asian/Pacific Islander, Hispanic, American Indian/Alaskan Native, and White.

EEO-1 Report

Hispanic or Latino, White (Not Hispanic or Latino), Black or African American (Not Hispanic or Latino), Native Hawaiian or Pacific Islander (Not Hispanic or Latino), Asian (Not Hispanic or Latino), Native American or Alaska Native (Not Hispanic or Latino), Two or More Races (Not Hispanic or Latino)

OFCCP's regulations regarding the race and ethnicity categories to be used by contractors have not changed to reflect the new categories for race and ethnicity categories required for the EEO-1 Report. However, as a matter of enforcement discretion, OFCCP does not cite any contractor for non-compliance with Executive Order 11246 solely because it utilizes the categories required by the EEO-1 Report in records required by OFCCP regulations.

Traditional Applicants and Internet Applicants

OFCCP's recordkeeping requirements reflect the reality that some contractors need to use data management techniques to limit the number of electronic applications they consider for a position. Other contractors may rely on a more traditional, paper-based process. When establishing recordkeeping practices, contractors need to devise a system that captures expressions of interest, such as job applications, for both traditional and internet applicants.

Internet Applicants

As noted above, contractors must keep records on all internet applicants. OFCCP defines "internet applicant" in its regulations. An internet applicant is a person who meets each of the following four criteria:

- Submits an expression of interest in employment through the internet or related electronic data technologies.
- Is considered by the contractor for employment in a particular position.
- Possesses the basic job qualifications as indicated in the expression of interest.
- Has not withdrawn from consideration at any point in the contractor's selection process before receiving an offer of employment.

For more information about recordkeeping for internet applicants, see Appendix N: Recordkeeping for Internet Applicants.

Traditional Applicants

Contractors must also keep records on all traditional applicants. Traditional applicants might express interest in employment orally or by completing an application form, depending upon the employer's practice.

Format for Keeping Records

Contractors may maintain paper or electronic records. Regardless of how they are preserved, the records must be accessible to OFCCP during a compliance evaluation or complaint investigation (*i.e.*, readily available for review and in a form or format that is readable and capable of being copied by OFCCP).

Contractors may transfer their original paper records to an electronic recordkeeping system, if the medium used accurately reproduces the paper original and would constitute a duplicate or substitute copy of the original paper record.

Contractors have the flexibility to determine the form or format they use to maintain electronic records such as applications and resumes. Contractors may opt to keep them in their applicant tracking system or to create paper copies. The same is true for maintaining the results of searches conducted on electronic internal or external resume databases.

Contractors must maintain records of search results conducted on electronic internal or external databases.

Internal Resume Databases

- A copy of each resume submitted.
- A record of the date each resume was submitted.

External Resume Databases

- Resumes of job seekers who met the basic qualifications of the position who were considered by the contractor.

Internal and External Resume Databases

- Records about the position, such as copies of the job listing or position description for each search of the database.
- Substantive search criteria used for each search.
- Date of each search

How Long to Keep Records

Contractors will need to keep records for at least one or two years, depending on how many employees they have and the size of their contract. The clock starts on the later of the date the record was created or the date the personnel action occurred.

For contractors subject to Section 503 and VEVRAA, additional three-year recordkeeping requirements apply. OFCCP discusses the three-year requirements later in this guide.

One year

The one-year retention requirement for personnel and employment records applies to contractors that have fewer than 150 employees. It also applies to contractors that do not have any government contract of \$150,000 or more.



Small contractors

Two years

The two-year retention requirement for personnel and employment records applies to contractors with both 150 or more employees and a government contract of at least \$150,000.

Affirmative Action Programs

OFCCP's regulations require that contractors with 50 or more employees and who have contracts meeting the specified dollar thresholds under Executive Order 11246, Section 503, and VEVRAA develop and maintain written AAPs. The thresholds are addressed below and in Appendix B: AAP Checklists.

- Contractors must develop and maintain written AAPs under both Executive Order 11246 and Section 503 if they have a federal contract or subcontract of \$50,000 or more and have at least 50 employees.
- Contractors must develop and maintain written VEVRAA AAPs if they have a federal contract or subcontract of \$150,000 or more and have at least 50 employees.

Contractors must develop their AAP(s) within 120 days from the start of the contract (or upon reaching 50 employees as applicable). In general, multi-establishment contractors must develop an AAP for each location, facility, or establishment that has 50 or more employees, unless they enter into an agreement with OFCCP to maintain functional AAPs.

The AAP documents organizational structure, demographic composition of the workforce, and other data such as personnel activity and compensation. It also documents the policies, practices, and procedures the contractor will use to ensure that qualified applicants and employees are receiving an equal opportunity to apply and compete for jobs, promotions, training, and other employment opportunities.

OFCCP provides free compliance assistance to employers who need help understanding the AAP requirements and developing AAPs. Once developed, all AAPs must be submitted to OFCCP when requested during a compliance evaluation. Additionally, as noted above, contractors must make Section 503 and VEVRAA AAPs available to applicants and employees upon request.

The overall objectives of each AAP are to:

- Identify areas in the workforce that are deficient in the utilization of women, minorities, individuals with disabilities, and/or veterans.
- Undertake appropriate actions to address underutilization and achieve or exceed utilization of women, minorities, individuals with disabilities, and/or hiring of veterans at all levels and all segments of the workforce. Over time, contractors should have workforces that reflect the demographics of the labor pools from which they select employees.

The regulations implementing each law provide the required elements of AAPs. Additionally, OFCCP has sample AAPs available on its website (<https://www.dol.gov/ofccp/regs/compliance/AAPs/AAPs.htm>). The descriptions of compliance actions in the sample AAPs illustrate possible compliance activities, but do not represent the only style, format, and content that meet regulatory requirements. OFCCP encourages contractors to personalize their AAPs to depict actions they have taken, or plan to take, to comply with the regulatory EEO requirements. Contractors should particularly describe innovative strategies they have employed, or plan to employ, to enhance the success of their respective programs.

How to Organize AAPs

By Establishment

Employees must be included in the affirmative action program of the establishment at which they work, with the below variations.

- Employees who work at establishments other than that of the manager to whom they report, must be included in the affirmative action program of their manager.
- Employees who work at an establishment where the contractor employs fewer than 50 employees may be included under any of the following three options:
 1. In an affirmative action program which covers just that establishment;
 2. In the affirmative action program which covers the location of the personnel function which supports the establishment; or,
 3. In the affirmative action program which covers the location of the official to whom they report.
- Employees for whom selection decisions are made at a higher level establishment within the organization must be included in the affirmative action program of the establishment where the selection decision is made.

Please note that for each of the above options, the AAP must identify the actual location of any included employee who is not physically located at that establishment.

Remote and Telework Employees

In recognition of the growing prevalence of remote and telework employees, OFCCP also provides the following guidance:

- Include a remote or telework employee in the AAP that covers the management to whom they report. For example, an employee who works remotely out of an office in Washington, D.C., for a manager in New York, New York, could be included in the New York AAP.
- Include a remote or telework employee in the AAP of the establishment where their selection decision was made. For example, an employee who was selected by corporate headquarters in Seattle, Washington, to run an office in Portland, Oregon, could be included in the Seattle AAP.
- Include a remote or telework employee in the AAP that covers the location of the personnel function that supports the employee. For example, if a manager who works from home in Columbus, Ohio, has four employees who work from home in various locations across Missouri and Ohio, and they are supported by a personnel function in Chicago, Illinois, the manager and employees could all be included in the Chicago AAP.

By Functional or Business Unit

Contractors who desire to develop their affirmative action programs based on business or functional unit, rather than by establishment, may do so if they enter into an agreement with OFCCP to develop Functional Affirmative Action Programs or FAAPs. The required AAP elements for FAAPs and establishment-based AAPs are the same. Approval for a contractor to follow a Functional Affirmative Action Program is good for five years, at the end of which the contractor may request renewal. FAAP Agreements are available for Executive Order 11246, Section 503 and VEVRAA AAPs. For more information on FAAP Agreements see Directive 2013-01 Rev. 2, Functional Affirmative Action Programs (<https://www.dol.gov/agencies/ofccp/directives/2013-01>).

Executive Order 11246 AAP

The basic requirements of the Executive Order AAP are listed below and then explained in more depth in the sections that follow.

1. **Organizational Profile.** A profile of the company's workforce using an "organizational display" or "workforce analysis" that provides detailed data reflecting staffing patterns within the establishment.
2. **Job Group Analysis.** An analysis that organizes jobs at the establishment into groups with similar content, wage rates, and opportunities and facilitates the comparison of the representation of minorities and women in the company's workforce with the estimated availability of minorities and women qualified for employment.
3. **Utilization Analysis.** An analysis that includes the determination of the availability of minorities and women for employment in the job groups, and compares their availability to their representation in the job groups.
4. **Placement Goals.** Reasonably attainable objectives set by contractors to measure progress toward achieving equal employment opportunity in job groups where women and minorities are underutilized.
5. **Designation of Responsibility.** Description of which official in the organization is accountable to ensure the effective implementation of the AAP.
6. **Identification of Problem Areas.** Description of barriers to equal employment opportunity, through in-depth analyses of the total employment process including representation of women and minorities in job groups, employment activity and personnel procedures.

7. **Action-Oriented Programs.** Description of established programs designed to take action to eliminate any problem areas identified in the previous item and to accomplish stated goals and objectives.
8. **Audit and Reporting System.** Description of the contractor's internal audit and reporting system designed to measure the effectiveness of the total AAP.

Organizational Profile

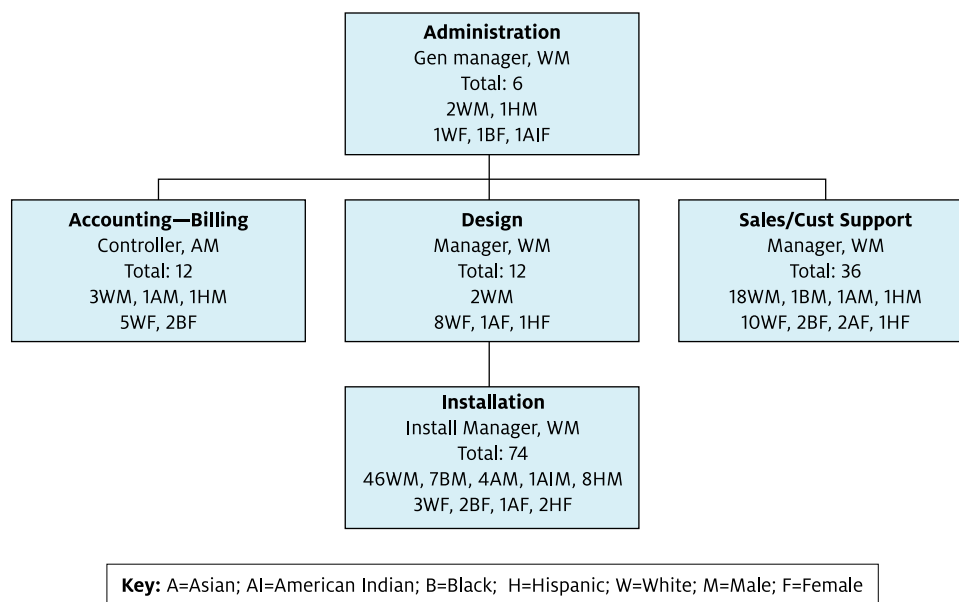
The organizational profile displays data that will assist contractors in identifying where in their workforce women or minorities are underrepresented or concentrated. Contractors may use either an “organizational display” or “workforce analysis” for the organizational profile. Each option is described below, and a sample is provided.

Organizational Display: An organizational display is a detailed chart of the organizational structure. For each company organizational unit, the organizational display must indicate the following:

- the name of the unit;
- the job title, race, ethnicity, and gender of the unit supervisor;
- the total number of male and female employees; and
- the total number of male and female employees in each of the racial and ethnic groups provided in OFCCP's regulations or in the EEO-1 Report.

Workforce Analysis

SAMPLE 1: Organizational Display Chart



For this and all subsequent instances of this list, contractors may choose to use the racial/ethnic categories in the current EEO-1 report or the categories listed in OFCCP regulations.

RACE AND ETHNICITY CATEGORIES

OFCCP Regulations

African-American/Black, Asian/Pacific Islander, Hispanic, American Indian/Alaskan Native, and White.

EEO-1 Report

Hispanic or Latino, White (Not Hispanic or Latino), Black or African American (Not Hispanic or Latino), Native Hawaiian or Pacific Islander (Not Hispanic or Latino), Asian (Not Hispanic or Latino), Native American or Alaska Native (Not Hispanic or Latino), Two or More Races (Not Hispanic or Latino)

OFCCP's regulations regarding the race and ethnicity categories to be used by contractors have not changed to reflect the new categories for race and ethnicity categories required for the EEO-1 Report. However, as a matter of enforcement discretion, OFCCP does not cite any contractor for non-compliance with Executive Order 11246 solely because it utilizes the categories required by the EEO-1 Report in records required by OFCCP regulations.



A workforce analysis lists each job title ranked from the lowest paid to the highest paid within each department or similar organizational unit, including departmental or unit supervision. The information in the workforce analysis may derive from payroll records, organizational charts, collective bargaining agreements and/or other relevant sources. There should be separate lists for each subunit in a department or for each line of progression within a department. For lines of progression, the lists must indicate the order of jobs through which an employee progresses from bottom to top. If there are no such typical promotional sequences, the workforce analysis should list job titles by department, job families, or disciplines, in order of wage rates or salary ranges.

Information by Job Title: Each job title must show the total number of employees, the total number of male and female employees, and the total number of male and female employees by racial/ethnic category. All job titles must be listed in a workforce analysis as they appear in collective bargaining agreements, if applicable. The workforce analysis must include all positions at the establishment, even those positions where a higher level establishment (corporate headquarters, for example) hired the employee, and included that employee in a corporate or mid-level AAP for goal-setting purposes. In such a case, the workforce analysis and job group analysis of the establishment AAP should identify whichever AAP includes that employee.

Wage Rate or Salary Range: The Workforce Analysis must identify the wage rate or salary range data for each job title. It must list titles in wage rate or salary range order from lowest paid to highest paid within department or other similar organizational units. Contractors may maintain coded wage or salary information in the workforce data, however, the code key must be provided for OFCCP review. Codes must be consistent across department/unit lines, (e.g., a job with a salary code “57” in Department A, must pay the same as one coded “57” in Department B).

Organizational Unit: Organizational units used in workforce analyses should be identifiable and should reflect the contractor’s organizational structure. Organizational units may be any component that is part of the corporate structure, such as a department, division, section, branch, group or similar component.

Lines of Progression: Lines of progression or usual promotional sequences must show the order of jobs in the line through which an employee moves from entry level to the top of the line. Lines of progression or promotional sequences may be identified from collective bargaining agreements, if applicable, as well as from organizational charts.

SAMPLE 2: Workforce Analysis

This example demonstrates how to set up a workforce analysis. It includes each job title in the identified work unit, ranked from lowest to highest salary wage rate to show lines of progression, as well as the racial/ethnic and gender breakdown of the employees in those titles. It also clearly identifies the unit supervisor.

WORK UNIT: Accounting—Billing					MALES						FEMALES					
Job Title	Wage Rate	EEO-1 Category	Job Group	Total Employees	T	W	B/AA	A/PI	AI/AN	H	T	W	B/AA	A/PI	NI/AN	H
Administrative Assistant	H-8	5	5	2							2	1	1			
Material Pricing Clerk	H-5	5	5	3	1	1					2	1	1			
Billing Clerk	H-5	5	5	3	1					1	2	2				
Payroll Administrator	S-H	2	2	1	1	1										
General Ledger Accountant	S-F	2	2	1							1	1				
Pricing—Billing Manager	S-E	1	1	1	1	1										
Controller (Unit Supervisor)	S-C	1	1	1	1			1								
DEPARTMENT TOTAL				12	5	3		1		1	7	5	2			

KEY: T = Total; W = White; B/AA = Black/African American; A/PI = Asian/Pacific Islander; AI/AN = American Indian/Alaskan Native; H = Hispanic

Concentration and Underrepresentation

Constructing an organizational profile provides a picture of employment patterns at a contractor's establishment. It helps them identify areas where women, minorities or both are concentrated as well as where they are underrepresented or absent.

“Concentration” means there is a higher percentage of minority groups, women, or both in a particular unit (job area) of a contractor's workforce than would be expected in terms of their representation in the workforce overall or in a relevant unit of that workforce. For example, in the sample workforce analysis below a company that manufactures uniforms has a much higher concentration of women in the low-paying “fabrication machine operator” position.

“Underrepresentation” means there is a lower percentage of minority groups, women, or both in a particular unit of a contractor's workforce than would be expected in terms of their overall representation in the workforce. In the sample workforce analysis below, the company has far fewer women working as higher-paid “warehouse attendants” than men.

SAMPLE 3: Workforce Analysis (Concentration of Women)

Workforce Analysis Department: Machine Shop, Example of Concentration of Females											
Job Title	Wage Rate	Job Group	Total Emp	Total Minority	Gender	TOTAL	W	B	H	A/PI	AI/AN
Fabrication Machine Operator	\$20-30K	7	25	3	Male	2	2	0	0	0	0
					Female	23	20	1	0	2	0
Fabrication Press Operator	\$20-30K	7	3	2	Male	1	1	0	0	0	0
					Female	2	0	1	1	0	0
Supervisor	\$60-70K	1.2	2	0	Male	2	2	0	0	0	0
					Female	0	0	0	0	0	0
DEPARTMENT TOTAL			30	5	Male	5	5	0	0	0	0
					Female	25	20	2	1	2	0

KEY: T = Total; W = White; B = Black; H = Hispanic; A/PI = Asian/Pacific Islander; AI/AN = American Indian/Alaskan Native

SAMPLE 4: Workforce Analysis (Underrepresentation of Women)

Workforce Analysis Department: Warehouse, Example of Underrepresentation of Females											
Job Title	Wage Rate	Job Group	Total Emp	Total Minority	Gender	TOTAL	W	B	H	A/PI	AI/AN
Warehouse Attendants	\$40-50K	8	25	4	Male	23	20	1	0	2	0
					Female	2	1	0	1	0	0
Forklift Operator	\$50-60K	7	3	2	Male	1	1	0	0	0	0
					Female	2	0	1	1	0	0
Supervisor	\$60-70K	1.2	5	0	Male	5	5	0	0	0	0
					Female	0	0	0	0	0	0
DEPARTMENT TOTAL			33	6	Male	29	26	1	0	2	0
					Female	4	1	1	2	0	0

KEY: T = Total; W = White; B = Black; H = Hispanic; A/PI = Asian/Pacific Islander; AI/AN = American Indian/Alaskan Native

Concentration or underrepresentation may be the result of legitimate nondiscriminatory reasons. They do not mean that discrimination exists, but only that the situation should be investigated further. The contractor in the above example should conduct an analysis of its personnel practices and procedures to see why this concentration or potential discrimination has occurred, by asking questions such as:

- Were women intentionally or unintentionally “channeled” or “steered” into lower paying positions? To answer this question, the contractor may wish to conduct interviews of personnel involved in the applicant/hiring process, including those involved in giving out and receiving applications, interviewers, first line supervisors and the selecting officials. Contractors should also examine whether women who were hired into concentrated entry-level positions were informed about the availability of other entry-level positions at the time of hiring.
- Were women advised of the differences in starting salaries at the time of application? To answer this question, the contractor may wish to conduct interviews of male and female employees, to ensure that all employees were given the same information about entry-level opportunities prior to and at the time of hire.
- Do the job descriptions of the positions accurately reflect the duties involved? To answer this question, the contractor may wish to review the job descriptions with employees and/or with first line supervisors, to ensure that the descriptions are accurate.

Depending on the results of its analysis, the contractor may need to take corrective action to remedy the effects of discrimination against women, and to take actions to ensure that in the future all qualified applicants have an equal opportunity to compete for the higher paying entry-level positions.

While the above example focuses on women, a contractor would conduct the same analysis for issues related to the concentration/underutilization of minorities as a whole, for specific racial or ethnic groups, or even for intersectional populations such as African-American women. For example, a contractor in an area with a large Hispanic population might find concentrations and/or underrepresentations for that particular group even if none exist for minorities as a whole, as shown on the following page.



SAMPLE 5: Workforce Analysis (Underrepresentation and Concentration of Hispanic Workers)

Workforce Analysis Department: Fabrication, Example of underrepresentation/concentration of Hispanic Workers											
Job Title	Wage Rate	Job Group	Total Emp	Total Minority	Gender	TOTAL	W	B	H	A/PI	AI/AN
Fabrication Machine Operator	\$30-40K	7	25	15	Male	23	9	1	12	1	0
					Female	2	1	0	1	0	0
Fabrication Press Operator	\$40-50K	8	15	5	Male	13	10	0	3	0	0
					Female	2	0	1	0	1	0
Supervisor	\$60-70K	1.2	5	0	Male	5	5	0	0	0	0
					Female	0	0	0	0	0	0
DEPARTMENT TOTAL			45	20	Male	41	24	1	15	1	0
					Female	4	1	1	2	1	0

KEY: T = Total; W = White; B = Black; H = Hispanic; A/PI = Asian/Pacific Islander; AI/AN = American Indian/Alaskan Native

In this example, the underrepresentation and concentration are between higher and lower paying positions within the same department rather than across departments. However, the contractor would apply the same sort of questions as those listed above during its analysis of this scenario.

Job Group Analysis

The job group analysis is similar to a workforce analysis, in that it shows current staffing patterns, and must include all job titles. However, in the job group analysis, contractors provide a list of job titles organized by similar content, opportunities and wage rates rather than by department or work unit.

- “Similarity in content” refers to the roles and responsibilities of job titles.
- “Similarity in opportunities” refers to the job’s training, transfers, promotions, pay, mobility and other career enhancement opportunities.
- “Similarity in wage rates” refers to the pay rate for the jobs.

Job groups should be specific to the organization. Small contractors (fewer than 150 employees) may use streamlined job groups based on the EEO-1 categories identified under step one below. However, larger contractors must create more specific and descriptive job groups. The following examples provide step-by-step guidance for how a larger contractor might form its job groups.

Small contractors

As with the workforce analysis, the job group analysis must identify and annotate positions where a different establishment selected employees for the positions and where the employee filling the position physically works at another facility or teleworks.

Job Group Formation Steps

Any job group formulation should first begin by compiling a complete list of all job titles within the organization. In some cases, the job titles, and therefore the resulting job groups, may not be identical across all establishments of the same organization. For example, a contractor may have a single dedicated warehouse facility containing line operators but all of its other establishments contain “white collar” positions only.

Step One: Assess Job Titles for EEO Categories

In this scenario, we compared the job titles to those in the EEO-1 Job Classification Guide to establish the larger group categories. Most contractors with 50 employees or more are required to file an EEO-1 Report, so the EEO-1 categories can be a convenient starting point to begin formulating job groups. Job groups should generally not contain jobs from different EEO-1 categories.

Start by reviewing each job title and comparing them to descriptions contained in the EEO-1 Job Classification Guide.

These categories are as follows:

1. Executive/Senior Officials and Managers
 - 1.A. First/Mid Level Officials and Managers
2. Professionals
3. Technicians
4. Sales
5. Administrative Support
6. Craft Workers
7. Operators
8. Laborers and Helpers
9. Service Workers

Once a contractor organizes the job titles into EEO-1 categories, it should assess each job title further to determine the appropriate breakdown by content, opportunity, and wage rate as shown in Step Two. As noted above, contractors with 150 or more employees should not use the EEO-1 category set as their job groups. Rather, they should break the categories out into more specific and descriptive job groups. While a contractor may use simplified labels such as “Professionals I” or “Technicians II,” as a best practice they should use more descriptive labels such as “2A-Accountants,” “2B-Engineers,” “4B-Outside Sales,” “7A-CDL Drivers,” or “7C-Assemblers.”

The EEO-1 Job Classification Guide is a reference document designed to assist employers in completing their EEO-1 reports. It maps 2010 Standard Occupational Codes and Census Job Codes And Titles into the ten (10) EEO-1 Survey job categories. The Guide can be found on EEOC’s website at <https://www.eeoc.gov/employers/eeo1survey/jobclassguide.cfm>

Step Two: Review Each Job Title's Content, Opportunity, and Wages

The following are some questions contractors can ask to determine the Content, Opportunity, and Wage Rates of each job title.

CONTENT

- What are the duties of the job?
- What are the responsibilities of the job?
- Is this job supervisory or nonsupervisory?
- What are the skill levels for this job?
- What is the function of this job?

OPPORTUNITY

- What are the opportunities for mobility for this job title?
- Is the job title a feeder group for other job titles or groups in the company? If so, which?
- Is training necessary to move to a different job? If so, is there training available to help people in the job title get promoted or transferred to better jobs?
- Is there an opportunity to move, and would that move enhance opportunity?
- Are there distinct lines of progression anywhere between or within the job titles?

WAGES

- What is the pay range for this job?
- What is the pay structure for this job?

Contractors can obtain assistance determining content by using the job description developed for each position and sources such as the Standard Occupational Classification (SOC) Guide (https://www.bls.gov/soc/2018/major_groups.htm) and the EEO-1 Job Classification Guide.

Contractors can find information for wage rate establishment and comparisons at the Bureau of Labor Statistics (<https://www.bls.gov/>). They can use this information to ensure that wage rates are in line with industry standards and that the titles are appropriately grouped. Note that large apparent differences in pay, when associated with different job titles within a job group, can suggest an unacceptable job grouping.

Step Three: Consider Size of Group

This is the first step in comparing the representation of women and minorities in a job group to their availability for employment in the job group, and requires the percentage of women and minorities employed in each job group. Therefore, it is important to ensure that the size of the job group will result in the ability to set utilization goals and determine whether disparities exist. At minimum, the job group should be large enough that when assessing underutilization in that group, a goal of at least one whole person can be established. Contractors may consider the following questions when considering the size of the job group.

- Will the size of the groupings enable the contractor to determine whether the percentage of women or minorities in a particular job group is less than would be reasonably expected given their availability percentage in the job group?
- Will the contractor be able to use the job groupings to conduct multiple analyses required by OFCCP's regulations, specifically the utilization analysis and analysis of personnel activity data to determine whether selection or compensation disparities exist?

Step Four: Formulate Job Groups

After completing the first three steps, contractors should compare the similarities and differences of positions to determine the most appropriate groupings.

AAP Job Group Example: Reviewing Content, Opportunity, and Wages for Technicians

This example shows how a contractor started with EEO-1 Job Categories, analyzed each job title in the Technician job group, and determined to create three AAP Job Groups for different job titles within the EEO-1 Job Category. For the example, assume that the contractor worked with Office of Apprenticeships to develop an apprenticeship program that covers all Technician positions. Overall, technicians install, upgrade, and maintain field equipment used by the contractor in their business. The apprenticeship program in this case does not fall under a CBA, so the contractor does not need to review a CBA when evaluating the content, opportunity, and wage rate of each job title. There are four levels of progressive job titles in the Technician job group: Technician I, Technician II, Technician III, and Senior Technician.

On the following page is a description of each job title's content, opportunity, and wages, followed by a comparison to show why the contractor created this job group.

BEST PRACTICES

Review Screening Criteria: While formulating job groups, this is a good time to review the screening criteria for specific jobs and job descriptions to ensure they are related to the job. If not, update the criteria and/or descriptions before moving forward. For example, relevant screening criteria for computer technicians could include degrees from technical colleges and IT programs as well as previous experience in IT positions, but weight lifting requirements would probably not be relevant. Alternatively, for a warehouse packing position, weight lifting requirements could be related to the job, but a college degree most likely would not.



Creating AAP Job Groups Using EEO 1 Job Categories				
Job Title	Job Description	Content	Opportunity	Wages
Technician I	Technician Is are new employees who enter the contractor's workforce externally through an approved apprenticeship program. They attend an initial three-month paid in-house training program involving hands-on laboratory exercises and participatory lectures to establish fundamental skills such as an understanding of electronic principles and basic functions of the systems used in the field. After this, they attend a set number of hours in the classroom while accumulating on-the-job training hours.	• Technicians at this level are in the first three years of their career. Their primary focus is learning the job and performing the basic duties under supervision. • Apprentice Technicians are responsible for learning the fundamentals of maintaining field equipment and typically work alongside a Journey-level Tech.	• Promotion to Journey-Level Tech. • Apprentices are developed into Journey-level Technicians provided they meet the expected criteria, including the required number of training hours and field training.	• Starting at \$12.00 per hour. • \$0.50 per hour increase every 6 months. • Standard benefits for all employees.
Technician II	Technician IIs are Journey-level technicians who have completed the first three years of the apprenticeship program and are now certified as journey-level. At this point, they have demonstrated enough competence to operate independently, and they are expected to help apprentices on their team advance in development.	• Troubleshoot, repair, and maintain field equipment. • Assist apprentices in their development. • Document maintenance timely and correctly. • Sign off on independent troubleshooting and repairs performed in the field. • Validate progression of apprentices by signing off certification of specific tasks in training records while working in the field.	• Technician IIs are eligible for competitive promotion to Technician III.	• Upon completion of requirements for Tech I to complete journey-level certification, wages for Tech IIs automatically go to \$18.90 an hour. • Additional \$1.00 an hour for every year after. • Standard benefits for all employees.
Technician III	Technician IIIs are seasoned Journey-level technicians that have advanced to a higher skill level and begin taking on greater responsibility related to both project management and training other technicians.	• Same base duties as Technician II • Sign-off on completion of complex projects, including those that require Master-level signature. • Validate progression of Tech Is and IIs by signing off certification of specific tasks in training records while working in the field, including those requiring Master-level signature.	• Technician IIIs are eligible for competitive promotion to Senior Technician.	• Upon promotion to Tech III, wage rate increased to \$26.75 an hour. • Additional \$1.75 an hour for every year after. • Standard benefits for all employees.
Senior Technicians	Senior Technicians are master-level Technicians who begin to move into more of a supervisory role. They still often do work in the field alongside lower level technicians, but there are certain jobs that only they can certify as complete due to safety issues. Similarly, they help lower level technicians progress in their development.	• Same base duties as Tech III • Validate progression of all other Techs by signing off certification of specific tasks in training records while working in the field, including those requiring Master-level signature. • Liaison with subcontractors and front-line customers to ensure proper coordination of field projects.	• Senior Techs are often a feeder group for Project Managers. As such, they have the option to attend annual management training sessions.	• \$42.00 per hour. • Annual merit increases based on individual and company performance.

Comparative Analysis of Job Titles in Technician Job Group

Job Content

Technicians I, II, and III all ultimately perform similar work but at distinct levels of skill. Responsibility for each level is progressively higher. Tech I positions cannot work alone. Tech IIs may work alone, but there are certain tasks for which they do not possess signature authority. Tech IIIs not only can work alone, but they are expected to oversee projects and coordinate associated logistics with management. Sr. Techs not only coordinate with management, but they are also expected to liaise with subcontractors and front-line customers.

Opportunity

There are clear lines of progression as defined by the apprenticeship program and supported by the contractor's subsequent job structure. Tech I positions are filled exclusively from external resources, and Tech II positions are a noncompetitive promotion from Tech I. Movement from Tech II to Tech III and from Tech III to Sr. Tech is through competitive promotion. Additionally, Sr. Techs can move into certain management positions, and have access to annual management training not available to the other levels.

Wages

Wages for each Tech level are separate and distinct. A Tech II could eventually earn as much as a Tech III in 12 years.

As the above demonstrates, in the case of Technicians, the further review of their responsibilities, unique opportunities for advancement, and wage structure justified the formation of three unique AAP job groups:

1. **AAP Job Group 3A: Technician I** — Technician I is entry-level, with minimal responsibility and high oversight, and progression is automatic and noncompetitive so long as all apprenticeship requirements are met. Therefore, it is reasonable to have them in a stand-alone job group since content, opportunity and wage rate are all distinctly different from the other positions.
2. **AAP Job Group 3B: Technician II and III** — Technician II and III are journey-level positions that, despite slight differences, are still close enough in content, opportunity, and wage rate to be acceptably combined into one job group. Both positions perform similar duties, although Tech IIIs work at a slightly more advanced level, and the progression track for both is competitive advancement to a nonmanagement position. Finally, because of the wage structure, a Tech II who chooses to remain in that position could eventually earn the same amount as a Tech III.
3. **AAP Job Group 3C: Sr. Technicians** — Sr. Technician, while not management-level, is still significantly unique enough compared to the other two journey-level positions that it can be reasonably argued that the differences in content, opportunity, and wage rate are sufficient to warrant a separate job group.

SAMPLE 6: Job Group Analysis Showing Job Titles, AAP Job Group Name and EEO-1 Category

Job Titles	Job Group Name	EEO 1 Category
General Manager Controller Human Resources Manager	1A	1.1-Exec/Sr. Officials and Managers
Machine Shop Supervisor Warehouse Supervisor	1B	1.2-First/Mid Officials and Managers
Accountant Purchasing Agent	2A	2-Professionals
Systems Engineer Mechanical Engineer	2B	
Technician I	3A	3-Technicians
Technician II Technician III	3B	
Sr. Technician	3C	
Inside Sales Representative	4A	4-Sales
Outside Sales Representative	4B	
Executive Assistant File Clerk Billing Clerk Customer Service Representative Inventory Control Clerk	5	5-Administrative Support
Systems - Specialist Installer Mechanic	6	6-Craft Workers
Fabrication Press Operator Fabrication Machine Operator Forklift Operator	7	7-Operators
Warehouse Attendants	8	8-Laborers and Helpers
Janitor	9	9-Service Workers



Utilization Analysis

Having established job groups by combining job titles based on similar content, opportunity, and wages, contractors must conduct a utilization analysis. This begins with identifying the numbers and percentages of existing women and minority employees, generally referred to as incumbents, in each job group. While some contractors choose to combine this information with other analyses, this example shows a “Placement of Incumbents in Job Groups” as a stand-alone table.

SAMPLE 7: Placement of Incumbents in Job Groups

Placement of Incumbents in Job Groups					
FICTITIOUS COMPANY, INC. JANUARY 2019					
Job Group	Total Employees	Total Female	Female Representation	Total Minorities	Minority Representation
1A-Senior Managers	5	2	40.00%	3	60.00%
1B-Entry and Mid-level Managers	65	25	38.6%	35	53.85%
2A-Analysts	235	35	14.89%	31	13.19%
2B-Info Systems	25	6	24.00%	10	40.00%
2C-Analysts – Other	90	15	16.67%	45	50.00%
2D-Engineers	305	55	18.03%	135	44.26%
3A-Entry-Level Technicians	105	8	7.62%	34	32.38%
3B-Mid-Level Technicians	85	5	5.88%	9	10.59%
3C-Senior Technicians	40	3	7.50%	5	12.50%
5-Admin Staff	10	10	100.00%	5	50.00%
8A-Production Workers	510	135	26.47%	195	38.24%
8B-Warehouse	75	15	20.00%	20	26.67%
9-Service Workers	15	5	33.33%	5	33.33%
Total	1565	319	20.38%	532	33.99%

Important things to remember are:

- The placement of incumbents must be done for all Job Groups consistent with the Job Group Analysis
- Incumbency percentages must be provided for women and minorities for each job group. These percentages are found by dividing the number of female or minority employees by the total number of employees.

Determining Availability

Availability is the percentage of qualified women and minorities available for placement into a given job group. It indicates the approximate level at which women and minorities would reasonably be expected to be represented in a job group if employment decisions are being made without regard to sex, race, or ethnic origin. Contractors must analyze availability separately for women and minorities. For both factors, contractors should identify the exact data sources used, including any external sources used in addition to the U.S. Census Bureau's EEO Tabulation (EEO Tab), described below, and relevant internal feeder groups.

While availability analyses are generally done for minorities in the aggregate, as a best practice contractors should also look at individual racial and ethnic groups. This is particularly important in geographical areas where there is a stronger presence of one particular racial or ethnic group compared to others.

Contractors are required to use the most current statistical information in deriving availability figures. When determining job group availability, contractors should consider two factors: external availability and internal availability.

External Availability

External availability is the percentage estimate of women and minorities possessing the requisite skills in an area in which the employer can reasonably recruit applicants. Reasonable recruitment area (RRA) is defined as the geographical area from which the employer usually seeks or could reasonably seek qualified applicants to fill positions. For example, it may coincide with the immediate labor area for unskilled entry-level positions, or it may cover a larger area (state, region or nation) for managerial or professional positions. Generally speaking, the more complex a job or the higher the position in the organizational structure it occupies, the broader the recruitment area becomes.

Contractors must use the EEO Tabulation to conduct availability analysis. The Census EEO Tabulation was created by the Census Bureau in conjunction with OFCCP and other agencies to provide a single resource for data necessary to perform equal employment opportunity analyses. The EEO Tab, along with detailed instructions for its use, is available at <https://www.dol.gov/agencies/ofccp/census-data>.

Contractors must use the EEO Tab for external availability data. Contractors may supplement the EEO Tab with other external data sources for this factor including state or local employment service data, graduation or apprenticeship data from applicable training institutions, or other sources. The contractor may not determine its RRA in a manner that excludes minorities or women. For each job group, the RRA must be identified, with a brief explanation of the rationale for selection of that recruitment area. Additionally, when determining availability for job groups, consideration may be given to the level of representation each job title has within the job group.

Internal Availability

Internal availability is the percentage estimate of female and minority employees who are promotable, transferable, and trainable within the contractor's organization. This estimate is the percentage of minorities and women who are or will become promotable or transferable into the job group. Depending on the job group, there may be a single feeder option, or multiple.

For example, the feeder group for Job Group 3C – Senior Technicians in Sample 7 above would only be Job Group 3B – Mid-Level Technicians. On the other hand, Job Group 1B – Entry and Mid-level Managers would most likely have multiple feeder groups as the candidates for promotion could conceivably come from any of the upper level professional and technical groups.

SAMPLE 8: External Availability Analysis

In this external availability analysis example, Job Group 2D has two different types of engineers. The computer hardware engineer is primarily responsible for the design, development and installation of computer equipment. The software engineer is responsible for designing and developing software to meet the end user needs. This example shows four steps to conduct the external availability analysis.

STEP ONE: Identify the level of representation for each job title

To determine the level or representation for each job title, divide the number of employees in the job title by the total number of employees in the job group.

- Representation of Computer Hardware Engineers: $25/305 = 8.2\%$
- Representation of Software Engineers: $280/305 = 91.8\%$

TABLE 1

Job Group 2D Engineers	Total Employees	Percentage of Job Title in the Job Group
Computer Hardware Engineer	25	8.2%
Software Engineer	280	91.8%
Total	305	100%

STEP TWO: Using the EEO Tab, determine the percentage of minorities and females in each job title with the requisite skills in the reasonable recruitment area.

The reasonable recruitment area is the area where the contractor is most likely to recruit when positions become available. Contractors must use the EEO Tab as their primary source for availability data although they may use additional sources where appropriate.

In this example, the RRA is the Washington Metropolitan Statistical Area. The 2010 Standard Occupational Classification (SOC) Code used for Computer Hardware Engineers in this example is Computer Hardware Engineer (17-2061). The SOC Code used for Software Engineers in this example is Software Developer, Systems Software (15-1133).

TABLE 2: Percentage of Women and Minorities in Job Titles in the Reasonable Recruitment Area

Job Group 2D Engineers	Percentage of Women in Reasonable Recruitment Area	Percentage of Minority in Reasonable Recruitment Area
Computer Hardware Engineer	16.6%	50.1%
Software Engineer	30.50%	22.27%

STEP THREE: Calculate adjusted availability for each job title by multiplying the percent of the job title in the job group by the percent of minorities/females in the RRA for that job title.

- Adjusted Minority Availability, Computer Hardware Engineers: $8.2\% \times 50.1\% = 4.11\%$
- Adjusted Minority Availability, Software Engineers: $91.8\% \times 22.27\% = 20.44\%$

TABLE 3: Adjusted Availability by Job Title - Minorities

Job Group 2D Engineers	Total Employees	Percentage of Job Title in the Job Group	Percentage of Minorities in Reasonable Recruitment Area	Adjusted Minority Availability Percentage
Computer Hardware Engineer	25	8.2%	50.1%	4.11%
Software Engineer	280	91.8%	22.27%	20.44%

- Adjusted Female Availability, Computer Hardware Engineers: $8.2\% \times 16.6\% = 1.36\%$
- Adjusted Female Availability, Software Engineers: $91.8\% \times 30.50\% = 28.00\%$

TABLE 4: Adjusted Availability by Job Title - Women

Job Group 2D Engineers	Total Employees	Percentage of Job Title in the Job Group	Percentage of Women in Reasonable Recruitment Area	Adjusted Female Availability Percentage
Computer Hardware Engineer	25	8.2%	16.6%	1.36%
Software Engineer	280	91.8%	30.50%	28.00%

STEP FOUR: Finally, add the adjusted availability percentages for women and minorities in each job title to find the total availability for women and minorities in the job group.

- Job Group 2D External Availability for Minorities: $4.11\% + 20.44\% = 24.55\%$
- Adjusted Female Availability, Software Engineers: $1.36\% + 28.00\% = 29.36\%$

TABLE 5: Total Job Group 2D External Availability – Minorities and Women

% Adjusted Availability	Computer Hardware Engineer	Software Engineer	Total Job Group Availability
% Adjusted Minority Availability	4.11%	20.44%	24.55%
% Adjusted Female Availability	1.36%	28.00%	29.36%

SAMPLE 9: Internal Availability Analysis

In the above example, the job group is filled exclusively through external hires. Other job groups, particularly those at senior professional and management levels, may be filled exclusively through internal placement. For internal placements, the process will be almost identical to external hires. However, instead of using external availability data from the EEO Tab, contractors use availability of women and minorities in internal job groups that are used as “feeders” for the subject position. This internal availability is a percentage estimate determined by dividing the total number of women and minorities in the feeder job group(s) by the total number of employees in the feeder job group(s).

Following is an example of how to calculate internal availability using a Technicians AAP Job Group. Please note that this is a stand-alone example and therefore does not use the incumbency numbers from the job group example above.

STEP ONE: Identify the level of representation for each job title.

To determine the level or representation for each job title, divide the number of employees in the job title by the total number of employees in the job group.

- Representation of Technician II: $15/35 = 42.9\%$
- Representation of Technician III: $20/35 = 57.1\%$

TABLE 6

Job Group 3B—Technicians	Total Employees	Percentage of Job Title in the Job Group
Technician II	15	42.9%
Technician III	20	57.1%
Total	35	100%

STEP TWO: Identify the feeder groups for the positions in Job Group 3B.

Using this example, Technician positions progress to the higher levels after gaining experience.

- Feeder Group for Technician III: Technician II
- Feeder Group for Technician II: Technician I

STEP THREE: Determine the percentage of women and minorities with the requisite skills in the feeder group. To determine the female feeder group percentage, divide the number of female employees by the total number of employees in the job group. Repeat this for minority employees to determine the minority feeder group percentage.

TABLE 7: PERCENTAGE OF WOMEN IN FEEDER JOB TITLES

Feeder Groups	Total Employees	Female Employees	Female %
Technician I	50	25	50%
Technician II	15	7	46.7%

TABLE 8: PERCENTAGE OF MINORITIES IN FEEDER JOB TITLES

Feeder Groups	Total Employees	Minority Employees	Minority %
Technician I	50	10	20%
Technician II	15	4	26.7%

STEP FOUR: Calculate adjusted availability for each job title by multiplying the percent of the job title in the job group (refer to step one) by the percent of minorities/females in the feeder group (refer to step three).

- Adjusted Female Availability, Technician II: $42.9\% \times 50\% = 21.5\%$
- Adjusted Female Availability, Technician III: $57.1\% \times 46.7\% = 26.7\%$

TABLE 9: ADJUSTED AVAILABILITY BY JOB TITLE - WOMEN

Job Group 3B	Percentage of Job Title in the Job Group	Percentage of Females in Feeder Group	Adjusted Female Availability Percentage
Technician II	42.9%	50%	21.5%
Technician III	57.1%	46.7%	26.7%

- Adjusted Minority Availability, Technician II: $42.9\% \times 20\% = 8.5\%$
- Adjusted Minority Availability, Technician III: $57.1\% \times 26.7\% = 15.2\%$

TABLE 10: ADJUSTED AVAILABILITY BY JOB TITLE - MINORITIES

Job Group 3B	Percentage of Job Title in Group	Percentage of Minorities in Feeder Group	Adjusted Minority Availability Percentage
Technician II	42.9%	20%	8.5%
Technician III	57.1%	26.7%	15.2%

STEP FIVE: Finally, add the adjusted availability percentages for women and minorities in each job title to find the total availability for women and minorities in the job group.

TABLE 11: TOTAL JOB GROUP 3B AVAILABILITY – WOMEN AND MINORITIES

% Adjusted Availability	Technician II	Technician III	Total Job Group Availability
% Adjusted Female Availability	21.5%	26.7%	48.2%
% Adjusted Minority Availability	8.5%	15.2%	23.7%

Sample Combined Availability Calculation

The majority of job groups, however, are a combination of both external and internal factors. For those groups, the contractor would first calculate the individual availability for minorities and women for each factor. It would then assign a weighted value to each factor based on the ratio of how positions in the job group are actually filled, for a combined weighted value of 100%.

In other words, if the majority of placements are historically promotions and transfers, with only a few being new hires, then the internal factor should have a higher weight than the external. The weighted availability, therefore, equals the value weight multiplied by the percentage of minorities and females in the feeder group and percentage of minorities and females in the RRA.

For the following availability analysis example, the contractor has two entry-level management job groups: Job Group 1C - Technical Managers and Job Group 1D – Non-Technical Managers. The contractor fills positions in Job Group 1C through a combination of internal and external sources. Please note that this is a stand-alone example.

STEP ONE: Establish the value weight for external hires and internal placements.

To determine the value weight for the respective external hires and internal placements, the contractor should review how placements are historically made. Depending on how often new placements occur, this may involve reviewing several years' worth of hire, promotion and transfer data to get an accurate determination. For this example, the contractor has determined that 9 out of 10 placements are filled through promotion from Job Group 2A, Analysts. It would therefore establish value weights as follows:

TABLE 12: VALUE WEIGHTING FOR EXTERNAL AND INTERNAL AVAILABILITY – JOB GROUP 1C

Factor	Value Weight
External	10.00%
Internal (Job Group 2A)	90.00%
	100.00%

STEP TWO: Calculating Weighted Availability for Women and Minorities

For this step, presume that the contractor has already conducted the individual external and internal availability analyses as shown above, with the following results:

TABLE 13: TOTAL JOB GROUP 1C AVAILABILITY – WOMEN AND MINORITIES

Factor	Female	Minority
External Availability [RRA –County X, Washington State; SOC Code 11-9041 (Architectural and Engineering Managers)]	15.23%	30.67%
Internal Availability [Feeder Group – Job Group 2A, Analysts]	5.9%	7%

The contractor would then multiply the internal and external availability percentages for women and minorities by the weight value determined for internal placements and external hires.

- Female Weighted Availability, External: 15.23% (external availability) x 10% (external weight value) = 1.52%
- Female Weighted Availability, Internal: 5.9% (internal availability) x 90% (internal weight value) = 5.3%

TABLE 14: JOB GROUP 1C WEIGHTED AVAILABILITY - WOMEN

Factor	Percentage of Females Available in RRA and Feeder Group	Value Weight of Factor	Weighted Factor Percentage for Female Availability
Internal	15.23%	10.00%	1.52%
External	5.9%	90.00%	5.3%

- Minority Weighted Availability, External: 30.67% x 10% = 3.07%
- Minority Weighted Availability, Internal: 7% x 90% = 6.3%

TABLE 15: JOB GROUP 1C WEIGHTED AVAILABILITY - MINORITIES

Factor	Percentage of Minorities Available in RRA and Feeder Group	Value Weight of Factor	Weighted Factor Percentage for Minority Availability
Internal	30.67%	10.00%	3.07%
External	7.0%	90.00%	6.3%

STEP THREE: Finally, add the weighted availability percentages for women and minorities for each factor to find the total weighted availability for women and minorities in the job group.

TABLE 16: TOTAL JOB GROUP 1C WEIGHTED AVAILABILITY - WOMEN AND MINORITIES

% Weighted Availability	External Availability	Internal Availability	Total Job Group Availability
% Weighted Female Availability	1.52%	5.3%	6.82%
% Weighted Minority Availability	3.07%	6.3%	9.37%

Sample Combined Availability Calculation – Disaggregate

In some cases contractors may need or want to determine availability percentages for specific race or ethnic groups rather than the aggregated “minority” category. In such instances, they would follow the same steps, simply substituting the individual race or ethnic groups.

Using the same Job Group 1C base as above, for this example, the reasonable recruitment area for the external availability factor has been changed to the state of New Mexico. The feeder group for the internal availability factor is still Job Group 2A.

The contractor would work through the same steps detailed in the previous example, to determine the external and internal availability percentages, but this time it would separate out the racial and ethnic groups rather than looking at minorities as whole. The final step would be to add the external and internal percentages for each racial and ethnic group for a final weighted availability percentage for each.

TABLE 17: JOB GROUP 1C WEIGHTED AVAILABILITY – DISAGGREGATED RACIAL AND ETHNIC GROUPS

Availability	B/AA	H	AI/AN	A/PI	Value Weight	WFP for B/AA	WFP for H	WFP for AI/AN	WFP for A/PI
External Availability	30.67%	40.50%	2.25%	25.57%	10.00%	3.07%	4.05%	0.23%	2.56%
Internal Availability	10.6%	15.25%	0	15%	90.00%	9.54%	13.73%	0	13.5%

KEY: B/AA = Black/African American; H = Hispanic; AI/AN = American Indian/Alaskan Native; A/PI = Asian/Pacific Islander;
WFP = Weighted Percentage Factor

TABLE 18: TOTAL JOB GROUP 1C WEIGHTED AVAILABILITY – DISAGGREGATED RACIAL AND ETHNIC GROUPS

% Weighted Availability	External Availability	Internal Availability	Total Job Group Availability
% Weighted Availability – B/AA	3.07%	9.54%	12.61%
% Weighted Availability – H	4.05%	13.73%	17.78%
% Weighted Availability – AI/AN	0.23%	0	0.23%
% Weighted Availability – A/PI	2.56%	13.5%	16.06%

KEY: B/AA = Black/African American; H = Hispanic; AI/AN = American Indian/Alaskan Native; A/PI = Asian/Pacific Islander;
WFP = Weighted Percentage Factor

Comparing Incumbency to Availability

After formulating job groups and determining the minority and female availability percentages for each one, contractors analyze the representation of minorities and women in each job group as compared with estimated availability. This identifies those job groups where the employment percentage of minorities, women, or both, is less than would reasonably be expected given the availability.

For the next example, the contractor has completed its availability analyses for women, total minorities, and disaggregated racial and ethnic groups. It then looks at those availability percentages against the actual incumbency percentages for each job group. The below charts show representative samples for a couple of job groups for women and minorities as well as a partial disaggregated sample. As a reminder, incumbency is calculated by comparing the number of employees in the target category to the total employees in the job group.

TABLE 19: INCUMBENCY TO AVAILABILITY COMPARISON - WOMEN

Job Group	Total Employees	Number of Females	Female Incumbency Percentage	Female Availability Percentage
1C	20	0	0%	7%
5A	53	23	43%	25%

This shows that female availability is greater than incumbency for job group 1C, but is less than incumbency for job group 5A.

TABLE 20: INCUMBENCY TO AVAILABILITY COMPARISON - MINORITY

Job Group	Total Employees	Number of Minorities	Minority Incumbency Percentage	Minority Availability Percentage
1C	20	3	15%	13%
5A	53	7	13%	30%

Here, minority availability is less than incumbency for job group 1C, but greater than incumbency for job group 5A.

TABLE 21: JOB GROUP 1C WEIGHTED AVAILABILITY – DISAGGREGATED RACIAL AND ETHNIC GROUPS

Job Group	Total Employees	# of B/AA	B/AA IP	B/AA AP	# of H	H IP	H AP	# of A/PI	A/PI IP	A/PI AP
1C	20	2	10%	13%	0	0%	18%	1	5%	16%
5A	53	6	11%	8%	1	2%	17%	0	0%	5%

KEY: B/AA = Black/African American; H = Hispanic; A/PI = Asian/Pacific Islander; IP = Incumbency Percentage; AP = Availability Percentage

Finally, the disaggregate comparison shows that for job group 1C, availability is greater than incumbency for all three racial and ethnic groups. However, for job group 5A availability is greater than incumbency for Hispanics and Asian/Pacific Islanders but is less than incumbency for Blacks/African Americans. The next step is for the contractor to determine whether any of the job groups for which availability exceeds incumbency, or representation in the job group, are underutilized.

Identifying Underutilization

The term “underutilization” is used to refer to the presence of fewer women or minorities (or particular racial or ethnic group members) in a particular job group than would reasonably be expected given their availability. Contractors can use a number of methods to determine whether the presence of women or minorities are lower than would reasonably be expected. Contractors must uniformly apply the same method to all job groups, as appropriate, and contractors should not use more than one method to mask underutilization. In rare cases contractors may use more than one method in an AAP, such as when there is a single job group that is too small for a statistical method to provide a reasonable result. In all cases, however, the methodology used should be noted in the AAP, and contractors should be able to explain why they selected that method. The most common methodologies are:

- **Any Difference:** Declaring underutilization when there is any difference between the availability percentage and the utilization percentage;
- **Whole Person Rule:** Declaring underutilization when the number of minority or female incumbents is at least one whole person lower than the number predicted by the availability percentages;
- **80% or 4/5 Rule:** Declaring underutilization only when the actual representation is less than 80 percent of the expected representation; and

- **Statistically Significant:** Declaring underutilization when the difference between the actual and expected representation is statistically significant according to common statistical tests such as a Z-test or Fisher's exact test.

For more information on statistical tests, see UGESP or "Reference Guide on Statistical Evidence" — <https://www.fjc.gov/sites/default/files/2014/10.stats.PDF>

For simplicity, this example will presume that the contractor used the 80% rule.

Women are not represented in Job Group 1C. They have a 0% incumbency. The incumbency is less than 80% of availability because 80% of 7% is .06%. Therefore, women are underutilized in Job Group 1C.

TABLE 22: UNDERUTILIZATION - WOMEN

Job Group	Female Incumbency Percentage	Female Availability Percentage	Is Incumbency Less Than 80% of Availability?
1C	0%	7%	YES

Minorities represent 13% of Job Group 5A. They have a 13% incumbency. The incumbency is less than 80% of availability because 80% of 30% is 24%. Therefore, minorities are underutilized in Job Group 5A.

TABLE 23: UNDERUTILIZATION - MINORITIES

Job Group	Minority Incumbency Percentage	Minority Availability Percentage	Is Incumbency Less Than 80% of Availability?
5A	13%	30%	YES

Because minorities are underutilized, the contractor decides to examine the utilization rates for specific racial and ethnic groups.

TABLE 24: UNDERUTILIZATION – DISAGGREGATED RACIAL AND ETHNIC GROUPS

Job Group	B/AA IP	B/AA AP	Incumbency < 80% of Availability?	H IP	H AP	Incumbency < 80% of Availability?	A/PI IP	A/PI AP	Incumbency < 80% of Availability?
1C	10%	13%	NO	0%	18%	YES	5%	16%	YES
5A	—	—	—	2%	17%	YES	0%	5%	YES

KEY: B/AA = Black/African American; H = Hispanic; A/PI = Asian/Pacific Islander; IP = Incumbency Percentage; AP = Availability Percentage

In the disaggregated analysis, the contractor determines that both Job Group 1C and Job Group 5A are underutilized for Hispanics and Asians/Pacific Islanders. However, even though the incumbency is less than availability for Blacks/African Americans in Job Group 1C, the difference is roughly equal to 80 percent. Therefore, it does not consider that group underutilized.

Now that it has identified its underutilized job groups, the final step for the contractor is to establish placement goals for each one.

Establishment of Placement Goals

Contractors that identify underutilization for women, minorities (in whole or disaggregate), or both, must establish a placement goal for each underutilized job group. Placement goals are a percentage of the annual selection rate, and are used to measure progress toward achieving equal employment opportunity. Established goals must be at least equal to the availability percentage for women and minorities (in whole or disaggregate) as applicable for the underutilized job group.

General rules for establishing placement goals.

- The goals component of the AAP does not permit unlawful preferential treatment or quotas with respect to persons of any race, color, sex, or national origin.
- Goals are not quotas, set-asides, or devices to achieve proportional representation or equal results. Rather, the goal-setting process targets and measures the effectiveness of affirmative action efforts to eradicate and prevent barriers to equal employment opportunity.
- Goals under Executive Order 11246 do not require that any specific position be filled by a person of a particular gender, race, or ethnicity. Instead, they only require that contractors engage in outreach and other efforts to broaden the pool of qualified candidates to include minorities and women.
- The use of goals is consistent with principles of merit. Goals do not require that contractors hire a person who does not have the qualifications needed to perform the job successfully. Hiring an unqualified person in preference to another applicant who is qualified is not required by any means.
- Goals may not be treated as a ceiling or a floor for the employment of members of particular groups.
- Compliance is measured by whether contractors have made good faith efforts to meet their goals. The failure to meet goals, by itself, is not a violation of the Executive Order.

Keeping with the previous example, the contractor establishes placement goals as follows:

TABLE 25: ESTABLISHMENT OF GOALS - WOMEN

Job Group	Female Incumbency Percentage	Female Availability Percentage	Establish Goal?	If Yes, Goal for Females
1C	0%	7%	YES	7%

TABLE 26: ESTABLISHMENT OF GOALS - MINORITIES

Job Group	Minority Incumbency Percentage	Minority Availability Percentage	Establish Goal?	If Yes, Goal for Minorities
5A	13%	30%	YES	30%

As a best practice, OFCCP recommends that contractors always set disaggregated placement goals for job groups when specific minority groups are underutilized. Note, however, that this is an “in addition to” rather than a replacement for the aggregate minority goal. Contractors must still conduct the aggregate analysis and establish an overall minority goal when minorities as a group are underutilized.

TABLE 27: ESTABLISHMENT OF GOALS – DISAGGREGATED RACIAL AND ETHNIC GROUPS

Job Group	B/AA IP	B/AA AP	Establish Goal?	If yes, goal for B/AA	H IP	H AP	Establish Goal?	If yes, goal for H	A/PI IP	A/PI AP	Establish Goal?	If yes, goal for A/PI
1C	10%	13%	NO	—	0%	18%	YES	18%	5%	16%	YES	16%
5A	—	—	—	—	2%	17%	YES	17%	0%	5%	YES	5%

KEY: B/AA = Black/African American; H = Hispanic; A/PI = Asian/Pacific Islander; IP = Incumbency Percentage; AP = Availability Percentage

Designation of Responsibility

As part of the AAP, contractors must designate a person to be responsible for implementing it, and must include in the written AAP a statement that identifies that person or persons, along with a description of duties. This person must have the authority and resources to ensure that the AAP is put into practice. Although the head of the company is ultimately responsible for the implementation of the company’s AAP, they generally delegate the responsibility for carrying out AAP implementation and EEO commitments to a management official at each facility or establishment.

As the representative of executive management, the designated Affirmative Action Officer has primary responsibility and accountability for implementing, directing and monitoring the AAPs.

Affirmative Action Officer Responsibilities

- Implementing the AAPs, including the development of policy statements and related internal and external communication procedures to disseminate those policy statements.
- Developing and supervising the presentation of current equal employment opportunity policy during the supervisory training and new employee orientation programs, which may include question-and-answer sessions for supervisors and employees answering their questions about the AAPs.
- Designing and implementing an audit and reporting system that will measure the effectiveness of the AAPs; indicate when remedial action is needed; and determine the degree to which goals and objectives have been attained.
- Advising management and supervisory personnel on developments in the laws and regulations governing equal employment opportunity.
- Serving as liaison between the contractor and OFCCP.
- Identifying and implementing action-oriented programs to address any potential problem areas.

- Conferring with community organizations representing women and minorities.
- Periodically auditing on-the-job training, hiring and promotion patterns to identify and resolve any problem areas related to ensuring equal employment opportunity for women or minorities.
- Serving as liaison between the contractor and community organizations representing minorities and women.
- Developing expertise and knowledge of equal employment opportunity guidelines and regulations to advise and update top management and supervisory personnel concerning developments affecting the equal employment opportunity program.

Additionally, contractors should also ensure that, as part of their general management objectives, supervisors and managers have the obligation to support equal employment opportunity policy and the AAP on a daily basis. At minimum, all supervisors and managers should endeavor to:

- Respond to inquiries about the Affirmative Action and Equal Employment Opportunity Policy, after consulting with the Affirmative Action Officer.
- Assist the Affirmative Action Officer during the investigation of allegations of discrimination.
- Ensure that all federal and state posters explaining the laws prohibiting discrimination are properly displayed.
- Participate in the development and implementation of AAPs.

Identification of Problem Areas

As part of the AAP, contractors must perform an in-depth analysis of their total employment process to identify any problem areas.

Specifically, they must evaluate:

- The composition of the workforce, by organizational unit and job group, and by minority group and sex, to determine whether there are disparities in utilization or distribution (i.e., placement in the different jobs within the unit or group);
- All personnel activity, including applicant flow, hires, terminations, promotions, and other personnel actions to determine whether there are selection disparities;
- Compensation systems to determine whether there are gender-, race-, or ethnicity-based disparities;
- Personnel procedures, including selection, recruitment, referral, and other procedures to determine whether they result in disparities in the employment or advancement of minorities or women; and
- Any other areas that might affect the success of the AAP (such as seniority practices, application of leave and other time-off policies, work policies including part-time and remote work, apprenticeship program practices, workforce environment, and compliance with posting and union notification requirements).

To aid in identifying problem areas by organizational unit and job group, contractors may find it useful to: 1) perform an analysis such as the Impact Ratio Analysis (IRA), that measures how employment processes affect minorities and women; and 2) use the Job Area Acceptance Range (JAAR) and the EEO Trend analyses to identify any areas of minority or female concentration and underrepresentation. OFCCP's Federal Contract Compliance Manual (FCCM) contains guidance on how OFCCP performs the IRA, JAAR and EEO Trend analyses during a compliance evaluation (<https://www.dol.gov/ofccp/regs/compliance/fccm/fccmanul.htm>).

The IRA compares selection rates for hires, promotions, and terminations during the preceding AAP year by analyzing these employment activities for each job group by males versus females, non-minorities versus minorities, or even between specific minority groups.

The JAAR looks at the distribution of the company's minority and female workforce by job group as well as by general categories such as 'white collar' and 'blue collar' to determine if there are significant areas of underrepresentation or concentration. Where such patterns are apparent, a company should also conduct an EEO Trend analysis using its EEO-1 report data for the past few years to determine whether the pattern is recent or established.

As noted above, contractors must also perform in-depth analyses of their compensation system(s) to determine whether there are gender-, race-, or ethnicity-based disparities. OFCCP does not dictate a particular method of analysis for meeting this regulatory requirement.

The AAP must list the problem areas identified and the actions or programs that will be implemented to correct them, as discussed in the next section.

Action-Oriented Programs

The content of this section of the AAP depends upon the nature of the problems identified through in-depth analyses of workforce utilization, personnel activity, compensation, and personnel practices, policies, and procedures. Once a contractor identifies problem areas, it must develop and implement a program to eliminate those problems.

Action-oriented programs should be **specific** and **result-oriented** to accomplish the aims for which they are created. "Specific" means describing what action(s) is to be taken, who is responsible for performing the action(s), and when the action(s) will be accomplished. "Result-oriented" means that proper execution of the program will likely lead to an increase in minority and/or female participation in the department, job group, training program, or to remedy another identified problem area. The action-oriented programs must be described in the AAP, and their objectives must be achievable. Examples of the types of programs and initiatives that contractors have found effective in addressing specific utilization problems, for example, include mentoring partnerships, adopting schools, providing trainers and equipment to teach specific skills at vocational or technical schools, and internship programs with minority colleges and universities.

As an example, a contractor identified two problem areas:

1. lack of utilization for both minorities and females in Job Group 2A, Analysts
2. high turnover for females in Job Group 3B, Mid-level Technicians.

Contractors may find the principles discussed in DIR 2018-05, Analysis of Contractor Compensation Practices During a Compliance Evaluation (https://www.dol.gov/ofccp/regs/compliance/directives/dir2018_05.html) as well as the information in this guide useful in developing self-audits. At a minimum, the existing regulations require that all self-audits specifically assess whether race- or gender-based compensation disparities exist, that self-audits occur periodically, and that results are reported internally to management.

In response, it established goals to increase both minority and female utilization in Job Group 2A, and decrease female turnover in Job Group 3B.

Problem Area 1: Underutilization – Minority and Female – Job Group 2A

Job Group 2A is composed of entry-level analysts and is predominantly filled by external recruitment. Upon identifying the underutilization, the contractor would then analyze placements into the job group to determine whether underutilization was due to recruitment or selection. For this example, the contractor has determined that the problem is a lack of qualified minority and female applicants (recruitment) rather than a selection issue. To address the problem, the contractor developed and instituted specific affirmative actions to improve the recruitment of qualified minorities and females, to include:

- Posting employment advertisements for all positions in any local minority and women's interest media;
- Disseminating information on the job opportunities to organizations specifically representing minorities and women, as well as employment development agencies in general;
- Encouraging all employees to refer qualified minority and female applicants;
- Actively recruiting at secondary schools, junior colleges, colleges and universities with predominantly minority or female enrollments;
- Conducting targeted recruitment at educational institutions and programs that specialize in the particular skill sets required for these positions; and
- Requesting employment agencies to refer qualified minorities and women.

The contractor may also want to explore whether there are existing employees in other job groups that could be developed for promotion or transfer, and institute appropriate action programs to increase that type of opportunity as well.

Problem Area 2: High Turnover – Females – Job Group 3B

Job Group 3B, Mid-level Technicians is comprised of Technician II and Technician III positions. The majority of placements into the group come from noncompetitive promotions out of the entry-level Job Group 3A, Technician I. Employees move from Technician II to Technician III by competitive promotions, and Technician III is the feeder position for competitive promotion into the Job Group 3C, Sr. Technician positions. These positions involve management training and are a feeder pool for entry-level management positions. Upon identifying that Job Group 3B had an unusually high turnover for females, the contractor decided to take various actions, starting with determining the reasons behind the turnover rate and then designing methods to reduce or eliminate it.

1. Determine reasons for turnover.

Initiating a standard policy of conducting exit interviews will provide the contractor with one best practice method of analyzing turnover. Even involuntary separations can provide a company with useful information regarding its working environment. Therefore, exit interviews could be conducted with all outgoing employees.

Other useful data regarding turnover can come from elements of a company's audit and reporting systems. Such data can often serve to confirm information derived from exit interviews. For example, if a majority of the 3B females stated in their interviews that they were leaving because it was impossible to get promoted, the company should then

look at their personnel activity analysis of all promotions both within and out of that job group. In other words, they should review both the internal job group promotions from Tech II to Tech III, as well as the promotions out of the job group from Tech III to Sr. Tech (Job Group 3C). Similarly, if compensation was raised as an issue, the company's compensation analysis could identify if there was a problem with women being paid less than the men in the same positions.

2. Design specific action steps to remedy the identified problem(s).

Where, for example, the exit interviews and analyses have determined that the primary reason behind the high turnover rate is the belief that female technicians will not get promoted, some of the options the company can take to remedy the issue include:

- Reviewing the job requirements for promotion to ensure that there is nothing that would impose barriers for females, and implementing appropriate revisions to the requirements as necessary;
- Conducting periodic affirmative action and equal opportunity training for all individuals involved in the selection process;
- Ensuring that all promotional opportunities are posted and available to all qualified employees;
- Instituting both formal and informal development programs to assist employees in identifying and preparing for promotional opportunities;
- Establishing a temporary 'oversight' system for promotions specific to this particular job group.

For example, a contractor may find that one of the 'requirements' for promotion from Technician II to Technician III is a certain amount of experience in a sub department or project area that has traditionally been staffed only by males. Appropriate revisions might include establishing a rotation for all Tech II employees to ensure everyone has the opportunity to gain the required experience, and/or identifying equivalent experience options that would satisfy the same requirement.

These are examples of action-oriented programs that a contractor might initiate in order to remedy identified problem areas. Additionally, contractors must remember to periodically review all programs to ensure that they are effective, and adjust as necessary.

Internal Audit and Reporting System

Contractors must develop and implement an internal audit and reporting system that periodically measures the effectiveness of its total AAP. A successful audit and reporting system should include:

- Monitoring of progress toward stated goals – conducted by job group;
- Analysis of employment activity – hires, promotions, terminations and all other personnel activity by job group, job title, and, where appropriate, organizational unit;

- Analysis of compensation programs – including salaries, wages and any other forms of compensation that are part of an employee’s compensation package, (e.g., stock options, bonuses, car allowances.) and establishment of procedures to correct any identified discrepancies. Additional guidance regarding how OFCCP conducts compensation analyses is located at <https://www.dol.gov/agencies/ofccp/directives/2018-05>.
- Review of the accessibility of online or electronic application systems to applicants and employees with disabilities and ensuring that needed reasonable accommodations can be easily requested and are readily provided when requested, unless to do so would result in undue hardship to the company (see guidance at <http://www.dol.gov/ofccp/regs/compliance/faqs/dir281faqs.htm>);
- Requirement for routine and periodic reports on the status of corporate or unit goal attainment;
- Discussion of reports with managerial officials; and
- Recommendation of actions to improve progress to top management.

Affirmative action programs should contain a narrative description of every aspect of the internal audit and reporting system. The description should specify the frequency of reports and audits and state that corrective actions, if necessary, will be taken as problems are revealed. The description should also designate the officials responsible for taking corrective actions. Lastly, it should indicate how and when program results and effectiveness will be reviewed with all levels of management in the company.

Support Data

Along with the elements identified above, as part of its overall affirmative action program, contractors must also maintain the support data and analyses used in evaluating and identifying problem areas. Support data includes all data and information reflecting personnel activity including, but not limited to:

- applicant flow;
- hires;
- terminations;
- promotions;
- compensation; and
- all other personnel actions used to determine whether there are selection disparities.

It also includes information that indicates the impact of tests and other selection procedures on employment opportunities in compliance with the Uniform Guidelines on Employee Selection Procedures at 41 CFR Part 60-3.



Section 503 and VEVRAA

In addition to developing the written AAP discussed above to demonstrate compliance with Executive Order 11246, contractors covered by the written affirmative action requirements of Section 503 and/or VEVRAA must also develop written AAPs to demonstrate compliance with OFCCP's regulations implementing those two laws. Though the requirements for Section 503 and VEVRAA written AAPs are similar, this guide explains important differences.

The AAP requirements for individuals with disabilities are in OFCCP's Section 503 regulations at 41 CFR 60-741, subpart C. The AAP requirements for protected veterans are in OFCCP's VEVRAA regulations at 41 CFR 60-300, subpart C.

Contract and Employee Thresholds That Trigger AAP Coverage

Section 503

Federal contractors must develop and maintain written Section 503 AAPs if they meet both of the following conditions:

- A federal government contract or subcontract of \$50,000 or more
- 50 or more employees

VEVRAA

Federal contractors must develop and maintain written VEVRAA AAPs if they meet both of the following conditions:

- A federal government contract or subcontract of \$150,000 or more
- 50 or more employees

Developing and Updating AAPs

As with the Executive Order AAP, new federal contractors subject to Section 503 or VEVRAA AAP requirements must develop written AAP(s) for each establishment within 120 days from the start of the contract or subcontract. Section 503 and VEVRAA AAPs are prospective in nature. They establish, in writing, a program for the contractor to follow for one year, with the overall goal of affording equal employment opportunity for individuals with disabilities (Section 503) and protected veterans (VEVRAA).

During the AAP year, the contractor collects certain information and conducts analyses for various required components of the AAP. The analyses help the contractor measure its progress toward equal employment opportunity. On an annual basis, contractors must audit and update the written AAP(s) based on that information and analyses, revising the AAP(s) if a program is ineffective.

Develop and Maintain Combined or Individual Section 503 and VEVRAA AAPs

Contractors covered by both Section 503 and VEVRAA have two options for developing those AAPs:

- Option 1: Contractors may develop two separate documents, one for each law (i.e., a Section 503 AAP and a VEVRAA AAP).
- Option 2: Contractors may develop a single, combined document that addresses the requirements of both laws.

Section 503 Utilization Goal and VEVRAA Hiring Benchmark

Section 503 and VEVRAA require that contractors aspire to meet percentage targets for the employment of qualified individuals with disabilities and protected veterans, respectively. However, failure to meet the goal or hiring benchmark is not a violation of the regulations and will not lead to a fine, penalty, or sanction.

Section 503 Utilization Goal for Qualified Individuals with Disabilities

OFCCP has established a utilization goal of 7% employment of qualified individuals with disabilities for contractors covered by Section 503 written AAP requirements. The goal serves as an objective that should be attainable by complying with all aspects of the AAP components required by OFCCP. The purpose of the goal is to provide contractors a target against which to measure the representation of individuals with disabilities. The disability utilization goal is not a quota. The goal should also not be used as a floor or a ceiling that limits or restricts the employment of individuals with disabilities. For each establishment:

- contractors with more than 100 employees must measure the representation of individuals with disabilities in each job group (as established by the Executive Order 11246 AAP).
- contractors with 100 or fewer employees have the option to measure the representation of individuals with disabilities within the entire workforce.

Either way, contractors must evaluate the utilization of individuals with disabilities as part of every annual AAP update. When the percentage of individuals with disabilities is less than the 7% utilization goal, contractors need to take steps to determine whether and where impediments to equal employment opportunity exist. At a minimum, contractors must identify problem areas by evaluating the AAP components described below, such as the effectiveness of outreach and review of personnel processes. Contractors must develop and execute action-oriented programs to correct any identified problem areas.

- Action-oriented programs may include the modification of personnel processes to ensure EEO for individuals with disabilities.
- Alternative or additional outreach and recruitment activities.

VEVRAA Hiring Benchmark for Protected Veterans

Contractors covered by the VEVRAA written AAP requirements must establish a hiring benchmark for protected veterans every year, or adopt the national benchmark provided by OFCCP each year, as part of their AAP update. The VEVRAA hiring benchmark is not a quota but a

quantifiable method by which a contractor can measure its progress toward achieving equal employment opportunity for protected veterans at each establishment.

The VEVRAA hiring benchmark sets a target for hiring protected veterans during one AAP year. To measure its progress, a contractor calculates the percentage of total hires who are protected veterans hired during that AAP year. This is different than the disability utilization goal analysis, which looks at all individuals with disabilities employed by the contractor, regardless of when they were hired.

Contractors have two options when setting their VEVRAA hiring benchmark each year in the written AAP:

- Option 1: Establish a benchmark equaling the national percentage of veterans in the civilian labor force. OFCCP publishes this percentage every year on its website.
- Option 2: Establish a customized benchmark taking into account at least five factors.

Contractors may use the same option for all their establishments or choose to use the national percentage for some while establishing a customized percentage for others.

Three-year Recordkeeping Requirement for Benchmarks

The benchmarks and methods used to set benchmarks must be documented, and the documentation must be maintained for three years by all contractors regardless of size.

Invitation to Self-Identify

To comply with Section 503 and VEVRAA, contractors must invite each individual seeking employment to identify whether they are an individual with a disability or a protected veteran. This requirement is key to compliance because contractors need the information collected from these invitations to perform components in their AAP(s), such as the disability utilization analysis, annual audit, and evaluation of the effectiveness of outreach and recruitment efforts.

OFCCP's regulations require contractors to make these invitations voluntary. Contractors must not use refusal to self-identify as the basis for adverse treatment.

Contractors must protect the confidentiality of the information provided in response to the invitation to self-identify. Contractors are required to keep all information on self-identification confidential and maintain it in a data analysis file, rather than in the medical or personnel files of individual employees. The information should not be available to anyone involved in making selection decisions and should be used only to conduct Section 503 and VEVRAA analyses required by OFCCP.

SETTING A CUSTOMIZED VEVRAA HIRING BENCHMARK

Contractors who choose to develop a more individualized hiring benchmark instead of using the one published annually by OFCCP must consider the following five factors.

1. The average percentage of veterans in the civilian labor force in the state where the contractor is located over the preceding three years, as posted in the Benchmark Database on the OFCCP Web site;
2. The number of veterans, over the previous four quarters, who participated in the employment service delivery system in the state where the contractor is located, as posted in the Benchmark Database on the OFCCP Web site;
3. The applicant and hiring ratios for the previous year;
4. The contractor's recent assessments of the effectiveness of its outreach and recruitment efforts; and
5. Any other factors, such as the nature of the job or its location, that would affect the availability of qualified protected veterans.

Contractors may harmonize the solicitation of data on race, ethnicity and sex with the pre-offer invitation to self-identify as an individual with a disability and the invitation to self-identify as a protected veteran.

The requirements for invitations to self-identify under Section 503 and VEVRAA are different, as explained below.

Invitation to Voluntarily Self-Identify as an Individual with a Disability (Section 503)

Contractors must offer the opportunity to self-identify as an individual with a disability at several different phases.

- Contractors must offer it to each applicant at the pre-offer phase of the hiring process.
- Contractors must offer it to each applicant at the post-offer phase of the hiring process.
- Contractors must extend the invitation to self-identify to all of its employees within the first year of being subject to Section 503.
- Contractors must extend the invitation to self-identify to all of its employees every five years.
- During the intervening five years, contractors are required to remind employees, at least once, that they may voluntarily update their disability status at any time.

OFCCP's regulations for Section 503 require contractors to offer the invitation to self-identify using the Voluntary Self-Identification of Disability Form (Form CC-305). The Office of Management and Budget authorizes this form, available on OFCCP's website. The form is also available in Appendix R: Invitation to Self-Identify – Section 503.

Invitation to Voluntarily Self-Identify as a Protected Veteran (VEVRAA)

Contractors must offer each applicant the opportunity to self-identify as a protected veteran at two different phases:

- Contractors must offer it to each applicant at the pre-offer phase of the hiring process.
- Contractors must offer it to each applicant at the post-offer phase of the hiring process.

Unlike Section 503, the VEVRAA self-identification requirement does not extend beyond the post-offer phase. Also, OFCCP's VEVRAA regulations do not mandate that contractors use a prescribed form for self-identification purposes.

Some contractors may prefer to create an electronically fillable version of the form used to invite self-identification. OFCCP permits electronically fillable versions, provided that the electronic version meets the following requirements.

- Display the OMB number and expiration date;
- Contain the text of the form without alteration;
- Use a sans-serif font, such as Calibri or Arial; and
- Use at least 11-pitch for font size (with the exception of the footnote and burden statement, which must be at least 10-pitch in size).

OFCCP specifies the minimum size and type of font to ensure the consistency of appearance, ease of reading and the general accessibility of the form. By using the OMB number and date, contractors ensure that job applicants and employees know that the form is an officially approved government form.

Although there is not a prescribed form, invitations to identify as a protected veteran must contain the following components:

- A statement that the company is a federal contractor required to take affirmative action to employ and advance in employment protected veterans under VEVRAA;
- A summary of the relevant portions of VEVRAA and the contractor's AAP;
- A statement that the information is being requested voluntarily;
- A statement that the information will be kept confidential;
- A statement that refusal to provide the information will not subject the applicant to adverse treatment; and
- A statement that the information will not be used in a manner inconsistent with VEVRAA.

OFCCP provides an acceptable form for the invitation to self-identify in Appendix S: Invitation to Self-Identify – VEVRAA. The version in this guide is more recent than the sample provided as an appendix to OFCCP's regulations.

Documenting Compliance with the Invitation to Self-Identify Requirements

Recognizing that contractors may have different practices and information technology capabilities, OFCCP permits a range of options for documenting compliance with the invitation to self-identify requirements of Section 503 and VEVRAA.

Paper Invitations. A contractor that invites voluntary self-identification by paper invitations must retain either the hard copies of the completed self-identification forms or electronic copies of the completed paper forms. The contractor must also retain any log, spreadsheet or database that it may have developed to record the data from the self-identification forms.

Electronic Invitations. A contractor that electronically invites voluntary self-identification has several options to document compliance.

- Retain electronic copies of the electronically completed self-identification forms, as well as any log, spreadsheet or database used to record the data from the self-identification forms.
- Retain hard copies of the electronically completed self-identification forms, as well as any log, spreadsheet or database used to record the data from the self-identification forms.
- Retain a detailed log, spreadsheet or database of the data collected from each electronically completed form, without copies of each individually completed form, if the electronic system does not store completed forms. However, the contractor must also be able to demonstrate how it delivered and/or displayed the voluntary invitation to self-identify.

Written AAP Component: EEO Policy

Contractors must develop an EEO policy statement. The EEO policy statement is a written document, usually in the form of a one- or two-page letter or memo addressed to employees and applicants, which explains the equal employment opportunity expectations of the company. The EEO policy statement(s) for protected veterans and individuals with disabilities may be combined with the EEO policy statement regarding race, color, religion, sex, sexual orientation, gender identity, and national origin.

Contents of the EEO Policy Statement

At a minimum, the EEO policy explains that all employment activity such as recruiting, hiring, promotions, training, terminations, layoffs, and pay will be done without regard to disability or protected veteran status and that all employment decisions will be based only on valid job requirements.

The EEO policy must also:

- Include clear indication of support for the contractor's AAP from the top U.S. executive of the company.
- Provide for an audit and reporting system (explained below).
- Indicate who is in charge of implementing the contractor's affirmative action activities.
- Include a statement that employees and applicants who exercise any right protected by Section 503, VEVRAA, and their implementing regulations will not be subjected to harassment, intimidation, threats, coercion, or discrimination because they have engaged in those activities. Protected activities include filing a complaint and assisting or participating in an investigation, compliance evaluation, hearing, or other activity related to the Section 503 and VEVRAA requirements.

What to Do with the EEO Policy Statement

- Review and update it annually as part of the written AAP.
- Post it on bulletin boards in a manner accessible and understandable to applicants and employees with a disability (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair).
- Post it internally and externally, as discussed below.

Written AAP Component: Disseminate EEO Policy Internally and Externally

Once a contractor establishes its EEO policy, it must share the policy internally with employees and managers and externally with outside organizations, including those that may assist and support outreach and positive recruitment for individuals with disabilities and protected veterans.

Purpose of Internal Dissemination

The purpose of internal dissemination of the EEO policy is to ensure internal support from all levels of managers and employees in matters of employment for individuals with disabilities and protected veterans. Contractors that have developed a meaningful plan for internal dissemination of the EEO policy are able to demonstrate a commitment to an inclusive culture.

Purpose of External Dissemination

The purpose of external dissemination of the EEO policy is to contribute to outreach and positive recruitment of individuals with disabilities and protected veterans.

TABLE 28: HIGHLIGHTING DISSEMINATION OF SECTION 503 AND VEVRAA EEO POLICY

DISSEMINATION OF EEO POLICY		
	Internal	External
The contractor must (required):	• Include the EEO policy in its manual or otherwise make it available to employees. • If party to a collective bargaining agreement, notify union officials and/or employee representatives of the policy and request their cooperation.	• Send written notification of the policy to its subcontractors, vendors, and suppliers.
The contractor should (recommended):	• Inform all employees and potential employees of its commitment to increase employment opportunities for individuals with disabilities and protected veterans. • Publicize the EEO policy in the company newspaper, magazine, or any other media used by the company. • Conduct special meetings with all levels of management to explain the policy and their role in its implementation. • Discuss the policy during orientation and training. • Include individuals with disabilities and protected veterans in photos of employees used by the company. • Include accomplishments of individuals with disabilities and protected veterans in company publications.	• Hold formal briefing sessions with recruitment sources on company premises, discussing job openings and positions, and establish a referral process that works for all parties. • In efforts directed at educational institutions, include special efforts for individuals with disabilities and protected veterans. • Participate in work-study programs for individuals with disabilities and protected veterans.

Written AAP Component: Review of Personnel Processes

Contractors must review personnel practices to ensure that the job qualifications of applicants and employees who are known protected veterans and applicants and employees with known disabilities are given careful, thorough, and systematic consideration for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available.

Personnel Processes to Review

- Contractors should rely on only the portions of a protected veteran's military record that are relevant to the qualification requirements of the opportunity at issue.
- Contractors must periodically review their reasonable accommodation practices and procedures. They should ensure that these procedures are disseminated to all applicants and employees, that requests for reasonable accommodation are promptly handled, and that any necessary reasonable accommodations are provided unless they would impose an undue hardship on the company.
- Contractors must periodically review the accessibility of their online or electronic application systems to applicants and employees with disabilities and ensure that necessary reasonable accommodations can be easily requested and are readily provided when requested unless doing so would impose undue hardship on the company.
- Contractors must include a description of the review and any necessary modifications to personnel processes or development of new processes in its AAP.

Establishing Procedures for Periodic Reviews

OFCCP's regulations provide a set of procedures which contractors may adapt for establishing periodic reviews of personnel actions.

"Review of Personnel Processes" is at Appendix C to 41 CFR Part 60-300.

- Individual personnel actions (including pre-employment testing) should be carefully documented.
- Contractors should be able to provide records of every opening for which an individual with a known disability or a known protected veteran was considered.
- Personnel records or employment application forms should identify the specific job opening.
- If a worker or an applicant with a known disability or a known protected veteran was not selected, contractors should prepare a statement of the reason for rejection and provide a comparison of the qualifications of the person selected with those of the individual with a disability or protected veteran.
- Records should also indicate the reasonable accommodations (if any) that were considered to enable the individual with a disability or disabled veteran to perform the essential functions of the job.

Written AAP Component: Review of Mental and Physical Job Qualifications

Contractors must provide and adhere to a schedule for the periodic review of all physical and mental job qualification standards to ensure that any qualification standard that screens out or tends to screen out qualified individuals with disabilities or disabled veterans is job-related and consistent with business necessity.

Qualification standards are often found in specific job descriptions and general company policy statements. Examples of common mental and physical job qualification standards include requirements such as "must be able to lift 50 pounds," "must be able to move heavy materials," or "must be able to tolerate heights." Other examples include specific hearing and vision requirements.

Examples of Business Practice Steps That Demonstrate Compliance

- **Step 1:** Create a schedule for the review of physical and mental job requirements. These requirements are usually in the job description, but it is a good idea to check job postings as well, if applicable.
- **Step 2:** Follow an established schedule, carefully reviewing any physical or mental job requirements listed for each position to ensure that, if any exist, they are consistent with what workers do in that job. If the physical or mental requirement is not related to the job and consistent with business necessity, it should be updated or removed.
- **Step 3:** Include the schedule and the results of the review in the written AAP.

Illustration: Several years ago, workers hand-carried materials in 100 pound packages, and the job description and posting reflected this. Due to changes in suppliers and industry standards, packages are now 30 pounds. Contractors should update the job description and posting accordingly.

Written AAP Component: Reasonable Accommodation

Contractors must comply with reasonable accommodation requirements, both as a matter of nondiscrimination and as a matter of affirmative action under Section 503 and VEVRAA.

Reasonable Accommodation as Nondiscrimination

It is unlawful discrimination for a contractor to fail to make reasonable accommodation to the known physical or mental limitations of a qualified job applicant or employee with a disability or disabled veteran, unless the contractor can show that the accommodation would impose an undue hardship on the operation of its business.

It is also unlawful for contractors to deny employment opportunities to qualified applicants and employees with disabilities and disabled veterans based on the need to provide reasonable accommodations.

Reasonable Accommodation as Affirmative Action

To be in compliance with the written AAP component for reasonable accommodation, contractors must be proactive in asking whether employees with known disabilities need reasonable accommodations. If an employee with a known disability has significant difficulty performing the job and it seems reasonable to conclude that the difficulty is related to the disability, the contractor must take the following steps:

- Confidentially notify the employee of the performance problem.
- Confidentially inquire whether the problem relates to the employee's disability.
- Confidentially inquire whether the employee needs a reasonable accommodation if the employee affirms that the problem is related to the disability.

What Are Reasonable Accommodations?

- Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability or a qualified disabled veteran to perform the essential functions of that position.
- Modifications or adjustments that enable an employee who is an individual with a disability or a disabled veteran to enjoy equal benefits and privileges of employment as are enjoyed by the contractor's other similarly situated employees who are not individuals with disabilities or disabled veterans.

OFCCP provides resources to help contractors comply with the reasonable accommodation requirement in its regulations at 41 CFR Part 60-741. Appendix A to that part provides "Guidelines on a Contractor's Duty to Provide Reasonable Accommodation." Appendix B to that part provides "Developing Reasonable Accommodation Procedures."

- Modifications or adjustments to a job application process that enable a qualified applicant who is an individual with a disability or a disabled veteran to be considered for the position desired. This includes any accommodations that are needed to enable an applicant with a disability to use a contractor's online or electronic application or testing system. It also includes providing an alternative means of applying or testing if there is not an accommodation that will enable the applicant with a disability to use the online or electronic system.

Reasonable Accommodation Procedures

Contractors may develop written procedures for processing requests for reasonable accommodation. While this is not a requirement, a written process can help contractors meet their affirmative action obligations for individuals with disabilities and disabled veterans. There are several advantages to using written procedures.

- When done well and made known to applicants and employees, written procedures help ensure that individuals with disabilities know how to request reasonable accommodations and how those requests will be processed.
- Written procedures also assist managers and supervisors in understanding their roles in the accommodation process if they receive a request, even if the request is informal.
- Written procedures help facilitate faster processing of accommodation requests.

Written AAP Component: Develop and Implement Procedures to Prevent Harassment

As an important part of the contractor's AAP, the contractor must develop and implement procedures to ensure that its employees are not harassed on the basis of disability or because of their status as a protected veteran.

Example Procedures to Prevent Harassment

- Develop a policy plainly stating that harassment on the basis of protected veteran status or disability will not be tolerated. This policy can be combined with other anti-harassment policies, such as policies prohibiting harassment on the bases of race, color, religion, sex, sexual orientation, gender identity, and national origin.
- Include in the policy clear procedures for what employees should do if they believe they or someone they work with has been harassed based on these protected statuses. Establish an easily accessible point of contact who handles these matters so employees know whom to reach and how to reach them.
- Communicate the policy with these procedures to all employees and managers, to ensure that everyone understands that harassment will not be tolerated and what to do if they experience or witness it.
- Take immediate and appropriate action when an employee reports harassment.

EXAMPLES OF REASONABLE ACCOMMODATIONS

- Making existing facilities used by employees readily accessible to and usable by individuals with disabilities and disabled veterans.
- Restructuring jobs.
- Offering part-time or modified work schedules.
- Providing reassignment to a vacant position.
- Acquiring or modifying equipment or devices.
- Adjusting or modifying examinations, training materials, or policies.
- Providing qualified readers or interpreters.

Communication of harassment prevention procedures can be achieved in writing, by posting the policy in common areas alongside or as part of the EEO policy or including it in company handbooks and newsletters. It can also be achieved orally, in regular meetings or employee trainings such as orientation.

Written AAP Component: Undertake Outreach and Positive Recruitment

Contractors must undertake outreach and positive recruitment activities that are reasonably designed to be effective in recruiting qualified individuals with disabilities and protected veterans.

Annual Assessment of Recruitment Efforts

Contractors must assess their external outreach and recruitment efforts annually, evaluating the effectiveness of their efforts in identifying and recruiting qualified individuals with disabilities and protected veterans, and must document this assessment as part of the written AAP(s). At a minimum, this documentation must include the criteria used to evaluate each outreach effort and the contractor's conclusion as to whether or not each effort was effective. If the contractor determines that the totality of its outreach and recruitment efforts were not effective, it must identify and implement alternative efforts. See below for examples of alternative outreach efforts contractors may use. When OFCCP evaluates a contractor for compliance, it will assess the reasonableness of the contractor's conclusion as to the effectiveness of its outreach and recruitment efforts.

Three-year Record Retention for Outreach and Recruitment

External outreach and recruitment efforts and analyses must be documented, and the documentation must be maintained for three years by all contractors regardless of size.

TABLE 29: EXAMPLES OF OUTREACH AND RECRUITMENT SOURCES FOR SECTION 503 AND VEVRAA

EXAMPLES OF OUTREACH SOURCES FOR POSITIVE RECRUITMENT	
Individuals with Disabilities	Protected Veterans
The State Vocational Rehabilitation Service Agency (SVRA) , state mental health agency, or state developmental disability agency	The Local Veterans' Employment Representative in the local employment service office (e.g., the American Job Center) nearest the contractor's establishment
The American Job Center nearest the contractor's establishment (www.careeronestop.org)	Veterans' counselors and coordinators (" Vet-Reps ") on college campuses
The U.S. Department of Veterans Affairs Regional Office nearest the contractor's establishment (www.va.gov)	
Entities funded by the U.S. Department of Labor that provide recruitment or training services for individuals with disabilities, such as the services currently provided through the Employer Assistance and Resource Network (EARN) (www.askearn.org)	The service officers of the national veterans' groups active in the area of the contractor's establishment
Local Employment Network (EN) organizations (other than the contractor, if the contractor is an EN) participating in the Social Security Administration's Ticket to Work (https://choosework.ssa.gov/findhelp/)	The U.S. Department of Defense Transition Assistance Program (TAP) (www.dodtap.mil)
Local disability groups, organizations, or Centers for Independent Living (CIL) near the contractor's establishment	NOTE: While there is some overlap between sources for individuals with disabilities and veterans, it is important to note that these are not necessarily interchangeable. Listed here are just a few of the many resources that contractors may find operating in their area. For help identifying the correct point of contact for any of these sources, or to find out about other local sources, contact OFCCP.
Placement or career offices of educational institutions that specialize in the placement of individuals with disabilities	
Private recruitment sources , such as professional organizations or employment placement services that specialize in the placement of individuals with disabilities	

Written AAP Component: Design and Implement an Audit and Reporting System

Not to be confused with the assessment of outreach efforts, the purpose of an internal audit and reporting system is to provide the contractor with a way to measure the effectiveness of its total written AAP.

This audit includes determining the extent to which the contractor's objectives have been attained and what the contractor will do if they have not been attained. This audit system should also address any analyses conducted by the contractor to ensure individuals with disabilities and protected veterans have not been discriminated against in employment practices such as the following.

- Recruitment, advertising, and job application procedures.
- Hiring, promotion, upgrading, award of tenure, layoff, and recall from layoff.
- Rates of pay and any other forms of compensation including fringe benefits.
- Job assignments, job classifications, position descriptions, and seniority lists.
- Sick leave, leaves of absence, or any other leave.
- Opportunities for participation in educational and training activities.
- Apprenticeships.
- Attendance at professional meetings and conferences.
- Provision of needed reasonable accommodations for applicants and employees with disabilities and disabled veterans.

Written AAP Component: Designation of Responsibility

A contractor must designate an official to direct or manage its AAP, and include in the written VEVRAA and Section 503 AAP(s) a statement identifying that person(s). A description of their duties should also be included in the AAP(s).

Ultimately, the head of the company is responsible for the implementation of the company's AAP. However, they will probably designate a management official to serve as the affirmative action officer with the responsibility for carrying out the contractor's AAP implementation and EEO commitments.

The affirmative action officer's identity should appear on all internal and external communications regarding the AAP, including the EEO policy statement discussed earlier in this part. This official is to be given top management support and sufficient staff to manage implementation of the program.

Written AAP Component: Training

All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes must be knowledgeable about the contractor's EEO obligations and affirmative action commitments under Section 503 and VEVRAA.

Written AAP Component: Data Collection Analysis

The purpose of the Section 503 and VEVRAA data collection analysis provisions is to document the numbers of individuals with disabilities and protected veterans, respectively, who apply and are hired for jobs with contractors. This data enables contractors to comply with other required components of the written AAP(s). For instance, contractors must use this data when assessing the availability of individuals with disabilities and protected veterans in the workforce and when evaluating the effectiveness of their outreach and recruitment efforts.

Three-year Record Retention for Data

The applicant, hire, and employment opening data described below must be maintained for three years by all contractors, regardless of size.

Data Collected for Analysis

The Section 503 data collection analysis requires the contractor to document and update the following information annually as part of its written AAP.

- Total number of applicants for all jobs.
- Total number of applicants hired.
- Number of applicants who self-identified as individuals with disabilities or are otherwise known to be individuals with disabilities.
- Number of applicants with disabilities hired.
- Total number of job openings and total number of jobs filled.

The VEVRAA data collection analysis requires the contractor to document and update the following information annually as part of its written AAP.

- Total number of applicants for all jobs.
- Total number of applicants hired.
- Number of applicants who self-identified as protected veterans or are otherwise known as protected veterans.
- Number of protected veteran applicants hired.
- Total number of job openings and total number of jobs filled.

Additional Requirements

EEO-1 Survey

Contractors with 50 or more employees and with a covered contract of \$50,000 or more must submit an annual EEO-1 Report with the Equal Employment Opportunity Commission. More information, including how to file electronically, may be found at <https://www.eeoc.gov/employers/eeo-reports-surveys>. This requirement can be found in OFCCP's regulations at 41 CFR 60-1.7(a).

VETS-4212 Federal Contractor Veterans' Employment Report

The Veterans' Employment and Training Service (VETS) collects and makes available to OFCCP reported data contained on the VETS-4212 report for compliance enforcement. Contractors with a covered contract of \$150,000 or more must complete and submit the VETS-4212 Federal Contractor Veterans' Employment Report annually each year by September 30. More information, including how to file electronically, can be found at <https://www.dol.gov/vets/vets4212.htm>. This requirement can be found in VETS' VEVRAA regulations at 41 CFR Part 61-300.

Notice of Employee Rights under the National Labor Relations Act

Executive Order 13496 requires that covered contractors provide notice to their employees of their rights under the National Labor Relations Act (NLRA), the law that governs relations between unions and employers in the private sector. The NLRA guarantees the right of employees to organize and to bargain collectively with their employers, to engage in other protected concerted activity, or to choose not to engage in any such activity. The required notice may be found in Appendix A to 29 CFR Part 471 subpart A, and is included as Appendix T: Notice of Employee Rights under the National Labor Relations Act.

Compliance with the Sex Discrimination Regulations

Executive Order 11246 also requires contractors to comply with the Sex Discrimination Regulations at 41 CFR Part 60-20. The term “sex” includes, but is not limited to, pregnancy, childbirth, or related medical conditions; and sex stereotyping. Policy statements should address discrimination and harassment on the basis of gender, and the action-oriented programs and internal audit sections should include how these guidelines will be implemented. In particular, contractors should consider and address the following elements:

- Gender may not be a condition of employment. Contractors must eliminate policies, procedures and working conditions that are inconsistent with equal treatment of sexes in day-to-day working conditions (e.g., breaks, overtime pay, rest periods).
- Distinctions based on sex in recruiting, hiring, firing, promotion, and other terms, conditions, or privileges of employment may be permissible where sex is a *Bona Fide Occupational Qualification* (BFOQ) reasonably necessary to the contractor’s normal operations. Some examples qualifying as such are:
 - » *Authenticity*: where a position requires a certain gender, such as actors or models.
 - » *Personal Privacy*: where sensitivity to gender requires same-sex support, such as restroom attendants. This is wholly reliant on securing a customer’s privacy. This differs from customer preference, where a business cannot refuse to hire a certain gender purely because they believe their customers would prefer to be served by that gender.
- Employment opportunities must be made available to all genders, and advertisements for employment may not express a gender preference, unless there is a BFOQ requiring such. Females may not be excluded from a position based on the belief that it is too dangerous, except where a BFOQ exists. Females may also not be excluded from a position on the ground of “reproductive health concerns” except as allowed under Title VII.
- Compensation and employee benefits, including “fringe” benefits like life insurance and bonuses, may not be offered based on gender.

This includes leave policies related to the Family Medical Leave Act (FMLA), sick leave policies, and short term disability policies.

- Contractors cannot treat men and women differently with respect to marital or parental status. Contractors who provide family, medical, or other leave also may not differentiate or deny on the basis of sex. For instance, they cannot decline to provide maternity leave on the same terms that they provide other medical or sick leave for conditions that similarly affect employees' ability to work.

Discrimination on the basis of pregnancy, childbirth, or related medical conditions, including childbearing capacity, is a form of unlawful sex discrimination. For example, contractors may not fire female employees or require them to go on leave because they are pregnant or parenting.

Discrimination on the basis of pregnancy includes actions such as:

- refusing to hire a pregnant female or firing a female employee who becomes pregnant
- limiting a female employee's job opportunity or duties solely on the grounds of pregnancy or denying a reasonable accommodation request related to pregnancy, childbirth or other related conditions when such accommodations are provided to other employees with similar health restrictions
- providing health insurance that fails to cover hospitalization and other medical costs for pregnancy, childbirth and related medical conditions to the same extent that it covers other medical conditions

Compliance with the Guidelines on Religion or National Origin Discrimination

Similarly, Executive Order 11246 also requires demonstrating compliance with the Guidelines on Religion or National Origin Discrimination under 41 CFR Part 60-50. Contractors must review their employment practices to ensure that employees and applicants are not harassed or discriminated against on the basis of, and receive fair consideration for job opportunities without regard to, religion or national origin. They must also ensure that the religious practices of applicants and employees are accommodated, unless to do so would impose an undue hardship. Personnel practices should also be reviewed for unintended impacts on religion and national origin. Although not required, self-monitoring of this obligation will aid in ensuring compliance.

To deny a reasonable accommodation request, a contractor must demonstrate that it would create an undue hardship related to business necessity, financial costs, or personnel problems. Other factors may also be considered in determining a contractor's obligation to provide accommodation.

Things to consider include:

- Have employment practices and policies been reviewed to determine whether members of the various religious and ethnic groups receive fair consideration for job opportunities?
- Are employees periodically informed of the company's commitment to equal employment opportunity for all persons, without regard to religion or national origin? Have executive, management, and supervisory employees been encouraged to take action to help fulfill this obligation?

- Have recruiting sources been informed of the company's commitment to provide equal employment opportunity without regard to religion or national origin?
- Have reasonable accommodations to the religious observances and practices of employees or prospective employees been made?

Preparing for a Compliance Evaluation

OFCCP conducts compliance evaluations to determine the following.

- Whether a contractor's affirmative action efforts comply with regulatory requirements.
- Whether a contractor has demonstrated good faith efforts in meeting its affirmative action requirements.
- Whether a contractor's employment policies and practices are free of discrimination.
- Whether a contractor has provided reasonable accommodations to qualified individuals with disabilities where doing so would not impose an undue hardship on the contractor.
- Whether a contractor needs technical assistance to understand the evaluation process or to ensure that its affirmative action efforts are complete and effective.
- How to best remedy any discriminatory practices or other regulatory violations.

Contractors are selected for compliance evaluations based on OFCCP's neutral selection process. Under the current process, if selected, an establishment will first be listed on the Corporate Scheduling Announcement List (CSAL). OFCCP publishes the CSAL on its website to provide contractors with at least 45 days' notice of selection for a compliance evaluation. Subsequent to that 45-day period, the contractor will receive a formal Scheduling Letter to initiate the compliance evaluation. Upon receipt of that letter, the contractor has 30 days to submit its AAP(s) and the accompanying itemized support data to the OFCCP district/area/regional office conducting the evaluation.

A compliance evaluation may consist of any one or more of the following investigative procedures:

1. A **compliance review**, consisting of a comprehensive analysis and evaluation of the hiring and employment practices of the contractor, any written AAPs the contractor is required to maintain, and the results of the affirmative action efforts undertaken by the contractor.
2. An **off-site review of records**, consisting of analysis and evaluation of written AAPs the contractor is required to maintain, supporting documentation, and other documents relevant to a determination of whether the contractor has complied with the requirements of the regulations implementing Executive Order 11246, Section 503, and VEVRAA.
3. A **compliance check**, conducted to determine whether the contractor has maintained records consistent with 41 CFR 60-1.12 (Executive Order 11246), 41 CFR 60-741.80 (Section 503), and 41 CFR 60-300.80 (VEVRAA), as applicable.
4. A **focused review**, restricted to one or more components of the contractor's organization, or one or more aspects of the contractor's employment practices.

When contractors are notified of their selection for a compliance evaluation, they are given an overview of the procedures that OFCCP will use to conduct the evaluation. OFCCP compliance officers from regional, district, and/or area offices will conduct the evaluation. Contractors should make sure that an officer of the company who is empowered to make and discuss policy and to make commitments for corrective action, where necessary, is available during the evaluation.

Contractors can prepare for a compliance evaluation by conducting a self-audit as a component of the AAP development process, or developing responses to inquiries likely to be asked by an OFCCP compliance officer during an evaluation. OFCCP compliance officers may ask to see documented evidence of a contractor's compliance efforts in the following areas:

External Notices

- Has the contractor conspicuously displayed the required EEO poster (and supplement) and the Pay Transparency Nondiscrimination Provision – all available on OFCCP's website – at each establishment in areas accessible to both applicants and employees?
- Do the contractor's contracts and purchase order forms display or reference the equal opportunity clauses as required?
- Has the contractor shared its EEO policies and affirmative action obligations with any unions with whom it has a collective bargaining agreement?
- Has the contractor provided notice to job seekers that it is an equal opportunity employer by using taglines in job advertisements?
- As applicable, has the contractor notified its local employment service delivery system of its status as a federal contractor and requested referral of protected veteran applicants?
- Has the contractor provided notification of its EEO policies and affirmative action obligations related to individuals with disabilities and protected veterans, to local recruitment sources and community organizations?
- As applicable under Section 503 and VEVRAA, has the contractor provided notice that those AAPs are available for review by applicants and employees upon request?

Internal Notices

- Has the contractor posted its EEO policies and affirmative obligations at each establishment in areas accessible to employees?
- Has the contractor included its EEO policies in employee handbooks and other internal materials such as company newsletters?

Audit of Personnel Operations

- Does the establishment have written personnel policies and procedures? Have these policies or practices had a discriminatory effect on minorities, women, individuals with disabilities, or protected veterans?
- Are job descriptions in written form? Are job criteria job-related?

Maintenance of Records

- Does the contractor maintain applicant flow records?
- Does the contractor maintain records about terminations and separations?
- Does the contractor maintain a system for identifying minority and female applicants and applicants who are individuals with disabilities and protected veterans for future consideration?

Validation

- Are written employment tests or other formal selection procedures such as structured interviews used by the contractor? If so, does the use of the selection procedure have an adverse impact on minorities or women? If so, have selection procedures been validated to ensure that they are valid predictors of an applicant's performance in that position or representative of important aspects of job performance?

Directing Recruitment Efforts

- What recruitment sources are used by the contractor? Do these sources refer women, minorities, individuals with disabilities, and protected veterans?

Effect of Personnel Practices

- Are applicant processing procedures carried out in a uniform, nondiscriminatory fashion?
- Is there a disparity between the separation and termination rates of minorities and women as compared to non-minorities and males; or for individuals with disabilities as compared to individuals without disabilities; or for protected veterans as compared to those who are not protected veterans? If so, why is that?
- Are there any restrictions to the granting of fringe benefits, including medical and life insurance, pension and retirement benefits, credit union benefits, and profit sharing and bonus plans based on the sex of the employee, status as a protected veteran or status as an individual with a disability?
- Are employment benefits that are available to the spouses and families of male employees, employees without disabilities, and employees who are not protected veterans also available to the spouses and families of female employees, employees with disabilities, and employees who are protected veterans?
- Does the contractor extend the same equal employment opportunities to minorities, women, individuals with disabilities, and protected veterans as it does to non-minorities, males, individuals without disabilities, and individuals who are not protected veterans?

Training Programs

- Are training programs, including apprenticeship programs, available to employees without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran?

Compensation Disparities

- Do jobs offered by the contractor have similar duties but different pay rates? If so, do minorities or women earn less than their nonminority or male counterparts? Do individuals with disabilities earn less than their counterparts who are not individuals with disabilities? Do protected veterans earn less than their counterparts who are not protected veterans?
- Do minorities, women, individuals with disabilities or protected veterans receive lower starting rates of pay than their counterparts with similar education and experience?
- Has the contractor reviewed its salary structure to ensure that it does not discriminate against minorities, women, individuals with disabilities or protected veterans?

Religion/National Origin

- Has the contractor reviewed its employment practices to determine whether applicants are employed, and employees are treated during employment, without regard to their religion or national origin?
- Have reasonable accommodations to the religious observances and practices of employees and prospective employees been made, unless the accommodation would impose an undue hardship on the conduct of the employer's business?
- Have recruiting sources been informed of the contractor's commitment to provide equal employment opportunity without regard to religion or national origin?

Sex Discrimination

- Has the contractor reviewed its employment policies and practices to determine whether they have an adverse impact on the basis of sex and, if so, has the contractor changed those policies or practices or ensured they are job-related and consistent with business necessity?
- Has the contractor made hiring and termination decisions without regard to pregnancy, childbirth, or related medical conditions, including childbearing capacity?
- Have reasonable accommodations been made where required by law for employees temporarily unable to perform some of their job duties because of pregnancy, childbirth, or related medical conditions?
- Does the contractor have a leave policy (written or unwritten), and is that policy (or the absence of a policy) consistent with business necessity if it has an adverse impact on employees of one sex?
- Does the contractor ensure that women are not steered into lower-paying or less desirable jobs based on sex?
- Does the contractor ensure that seniority lists are not maintained on the basis of sex?
- Does the contractor ensure that women are not excluded from certain jobs due to a belief that they are dangerous or unsuitable for women to perform?

Harassment

- Has the contractor implemented policies and procedures to prevent, identify, and remedy instances of harassment based on race, color, religion, sex, sexual orientation, gender identity, national origin, disability, and status as a protected veteran?

Retirement Policy

- Does the contractor's policy on mandatory or optional retirement age differ based upon the sex or race of the employee or their status as an individual with a disability or protected veteran?

Having answers and documentation for the above questions will go a long way toward preparing a contractor for an OFCCP compliance evaluation.

Compliance Review

A compliance review always begins with a desk audit and concludes with a notification of findings. It may also include an on-site investigation and/or an off-site investigation depending on the results of the desk audit or if the contractor was selected for a complete compliance review following OFCCP's normal selection procedures.

Desk Audit

During the desk audit, an OFCCP compliance officer (CO) reviews the written AAP(s) and personnel activity records to determine whether the contractor is complying with relevant provisions of 41 CFR Chapter 60.

The desk audit gives the CO an opportunity to:

- Review the basic organizational structure;
- Examine the Executive Order, Section 503, and VEVRAA AAPs for completeness, acceptability, and the inclusion of supporting data;
- Examine personnel policies and procedures;
- Identify areas where there has been a lack of progress in meeting goals and the information that will be needed to evaluate good faith efforts, including the development and implementation of programs designed to improve opportunities for minorities and women; and
- Identify areas for an in-depth investigation of potential discrimination where minorities and women are underrepresented or concentrated in the workforce; where employment activity has been disadvantageous to minorities and women; and where there may be problems in the compensation of minorities and women.

The CO conducts this review at their field office. At any time during the desk audit process, a CO may contact the contractor to make follow-up inquiries and/or to offer technical assistance.

Personnel Activity Analysis

During the desk audit of the Executive Order 11246 AAP submission and support data, the CO will analyze the employment activity data the contractor provides in response to the Scheduling Letter and Itemized Listing to determine whether there are any statistical indicators that the contractor's selection practices are not neutral. In particular, the CO will examine hiring, promotion, termination, and placement practices to conduct various analyses, including the impact ratio analysis (IRA) and standard deviation analysis. For this data, contractors must identify for each job group, broken out by race and gender, data on applicants, hires, promotions, terminations and any other personnel activity such as transfers. It is important that this information also include specifics on how "promotion" within the workforce is defined.

Desk audit results leading to an on-site review include:

- Insufficient data, and/or an incomplete AAP, was provided;
- Indicators of potential discrimination were discovered during desk audit;
- Complaints were received for the establishment under review

Please note that a failure to provide a complete and acceptable AAP and supporting data submission without extension approval will result in the immediate issuance of a Show Cause Notice as to why OFCCP should not initiate enforcement proceedings.

OFCCP will conduct an IRA on the submitted data, comparing the selection rates for males versus females, minorities versus non-minorities or even between specific minority groups to determine if adverse impact exists. Adverse impact is defined as “a substantially different rate of selection in hiring, promotion, transfer, training, or other employment related decisions for any race, sex, or ethnic group.” In order for such analyses to be accurate, it is critical that the submission addresses any specialized distinctions that might exist in relation to hires, promotions, terminations or other personnel activity. Any statistically significant adverse impact will subsequently be analyzed further during an on-site investigation.

Hiring

One of the main aspects of an OFCCP compliance evaluation is the impact ratio analysis of applicants to hires by race and gender. Where any hiring analyses reveal a potential adverse impact concern, OFCCP will conduct further investigation of the policies, procedures, and selection decisions. Therefore, it is important that contractors ensure that all policies and procedures are clear, well-documented, nondiscriminatory, and consistently applied.

OFCCP will review applicable selection policies and procedures, selection criteria for the positions in question, the applications and resumes of both selected and nonselected candidates, and any other documentation provided as justification for the selection decisions. Interviews will be held with hiring officials and others involved in the selection process.

In addition, for those contractors subject to Section 503 and VEVRAA, OFCCP will also conduct a similar review for hires of individuals with disabilities and protected veterans.

Promotions

As part of the support data for the AAP(s), contractors must also provide for each job group or job title, the total number of promotions by gender and race/ethnicity. Additionally, they should provide their definition of “promotion” and the basis on which the data was compiled (e.g., promotions to the job group, from and/or within the job group.). Although for review purposes OFCCP assumes that all incumbents are “eligible” and “qualified” for promotion, contractors should make sure this is clearly identified and explained in the AAP narrative.

OFCCP determines the selection rate for promotions by dividing the number of individuals who were promoted by the number of eligible individuals in the promotion pool. If adverse impact is identified at the desk audit, additional information will be requested (e.g., job postings, job descriptions, promotion policies, collective bargaining agreements.) and interviews may be conducted.

To ensure that all employees are given equal opportunity for promotion, contractors should:

- Post promotional opportunities;
- Offer counseling to assist employees in identifying promotional opportunities,
- Offer training and educational programs to enhance promotional opportunities and opportunities for job rotation or transfer; and
- Periodically evaluate job requirements for promotion.

Terminations

OFCCP will also analyze all terminations, both voluntary and involuntary. When OFCCP identifies adverse impact at the desk audit, it will request additional information (such as personnel files) and conduct interviews.

Compensation Analysis

Contractors are prohibited from discriminating in compensation. As part of their internal audit and reporting system, as well as their action-oriented programs, they must analyze their compensation systems. As noted above, compensation data must be submitted along with the AAP when selected for a compliance evaluation. This data is based on a “snapshot” date, which should be the same date used for the organizational profile and workforce analysis provided in the AAP. Prior to conducting a preliminary analysis, the CO reviews the data to make sure it has been provided in the requested format.

OFCCP has issued guidance on how it will analyze contractor compensation, enabling contractors to perform self-evaluations of their compensation system to determine if there is a problem and make any corrections to it. The CO uses the data and information in order to understand the compensation system and practices and to make compliance determinations. The CO may contact contractors during the initial analysis of the data to ask clarifying questions about the materials submitted, interpret codes or categories used in the data, identify any missing or incomplete information, and request additional information if it is needed.

OFCCP’s evaluation of compensation will include the total compensation package with all its components. In order to fully analyze the data and determine whether a contractor has met its obligations, OFCCP may request additional information to understand all the compensation elements. Generally, (in no specific order) the CO:

- conducts preliminary analysis of summary data (if necessary or appropriate);
- conducts an analysis of individual employee-level data;
- determines the most appropriate approach from a range of investigative and analytical tools;
- considers all employment practices that may lead to compensation disparities;
- develops pay analysis groups;
- investigates systemic, small group and individual discrimination;
- reviews and tests factors before accepting the factors for analysis; and
- conducts on-site investigation, off-site analysis, and refinement of the model as necessary.

More details on compensation analysis is available in Directive 2018-05, Analysis of Contractor Compensation Practices During a Compliance Evaluation (Aug. 24, 2018). <https://www.dol.gov/agencies/ofccp/directives/2018-05>

In any compensation review, the CO is focused on answering three key questions:

- Is there a measurable difference in compensation on the basis of a protected class?
- Are the differently compensated groups of employees comparable under the contractor's wage or salary system?
- Is there a legitimate, nondiscriminatory explanation for the difference?

Contractors have an opportunity to provide clarification of their submissions and to explain their compensation system and practices. The CO conducts a thorough investigation of all potential compensation discrimination issues and makes a compliance determination.

Conclusion of Desk Audit

At the conclusion of the desk audit, the CO must notify the contractor in writing of the general nature of any preliminary selection or compensation disparities that warrant further information requests or on-site review.

On-Site Investigation

As noted above, an on-site investigation will only be conducted when the desk audit indicates potential issues, except when the contractor has been selected for a complete review. The on-site offers the CO an opportunity to confirm and verify the information provided and to follow up on potential discrimination identified during the desk audit. An on-site investigation is performed at the facility under review. Prior to the on-site, the CO will coordinate with the contractor on mutually agreed upon dates. The CO will then issue an on-site confirmation letter that may also itemize information to be provided to OFCCP prior to the on-site and/or when OFCCP is on-site.

The on-site begins with an entrance conference with the CEO or appropriate designee, in which OFCCP's mission and the compliance evaluation process is discussed. In conducting the on-site, a CO compares the information and data reviewed during the desk audit with the actual employment practices at the company. The CO also reviews personnel, pay, and other employment records; interviews employees and company officials; and investigates other aspects of employment.

For contractors subject to Section 503 and VEVRAA, the on-site will also include interviews and review of records related to those regulations such as

- self-identification forms;
- reasonable accommodation requests and results; and
- applicant and hire data for individuals with disabilities and protected veterans.

OFCCP may inspect other documents as well, including VETS-4212 forms; reasonable accommodation records; and the placement of required postings, such as the "EEO is the Law" poster and supplement. Additional requests for data and documentation not previously provided may be made during the on-site investigation.

• **Measurable difference.** When statistical analysis is used, a measurable difference generally means a statistically significant difference - two or more standard deviations - consistent with Title VII principles. When nonsystemic comparisons of small groups are conducted, there must be a measurable difference in compensation plus sufficient other evidence (often in the form of anecdotal evidence).

• **Comparable employees.** OFCCP follows the Title VII standard of comparing similarly situated workers to establish a case of compensation discrimination. The definition of "similarly situated" is a case-specific legal standard. In the compensation discrimination context, "similarly situated" means that employees are similar in all the ways that are relevant in the contractor's compensation system. Relevant factors in determining similarity may include tasks performed, skills, effort, level of responsibility, working conditions, job difficulty, minimum qualifications, and other objective factors. Employees may be similarly situated where they are comparable on the factors relevant to the investigation, even if they are not comparable on others.

• **Legitimate, nondiscriminatory explanation for the difference.** OFCCP considers all relevant factors offered by the contractor on a case-by-case basis to determine whether the factors are implemented fairly and consistently applied, whether they should be incorporated into a statistical analysis, and whether, as a whole, they provide a legitimate explanation for any pay disparities.

It is important to ensure that an officer of the company who is empowered to make and discuss policy and to make commitments regarding corrective action, where necessary, is present during the on-site. An exit conference with the CEO, or appropriate designee, is generally held on the last day of the on-site or the CO may schedule a time to return for the exit conference.

Off-Site Analysis

The off-site analysis occurs only when there is additional information and data to review beyond the desk audit and/or the on-site review. In such circumstances, the CO may evaluate all data gathered during the course of the review including statistical information, interviews, notes, and results of record checks. The CO then makes a determination as to whether the policies and practices comply with OFCCP regulations.

Notice of Findings

After completing the review, OFCCP will notify the contractor of its findings. If all areas of concern have been resolved, the contractor will receive a Notice of Closing. If the CO determined that problems or violations do exist, OFCCP will issue either a Pre-Determination Notice (PDN) followed by a Notice of Violations (NOV), or just an NOV if the violations are technical in nature. The PDN outlines preliminary findings of discrimination and allows the contractor to submit additional information that may resolve the preliminary findings. The NOV, issued when the contractor's PDN response does not resolve the preliminary findings, contains an explanation of any violation(s) found, as well as the corrective actions and proposed remedies. OFCCP will determine whether it is appropriate to issue a PDN, NOV, or both, based on the facts of the individual compliance evaluation.

In general, a compliance evaluation may: 1) be closed after the desk audit, 2) continue with an on-site review that involves an examination of issues identified at desk audit, and/or 3) continue with an off-site review of information and records.

Contractors that demonstrate an active commitment to equal opportunity and have a well-organized AAP will allow OFCCP to conduct and conclude compliance evaluations more efficiently. Contractors can prepare for a compliance evaluation by:

- Becoming familiar with OFCCP's regulations, and, in particular 41 CFR Parts 60-1, 60-2, 60-3, 60-300 and 60-741.
- Updating AAPs annually.
- Ensuring that company officials and personnel are available to meet with OFCCP during the course of the review and are familiar with the OFCCP's mission and purpose.
- Conducting both required and proactive self-audits to assess compliance efforts and activities.

These can all be accessed online through our website: <http://www.dol.gov/ofccp>.

Alternate Compliance Evaluation Options

As an alternate to the above, OFCCP has two other compliance evaluation options – the Focused Review and the Compliance Check. Both of these evaluations are scheduled from the same list as regular evaluations.

Focused Reviews are restricted to one or more components of a contractor's organization or one or more aspects of its employment practices. For example, Section 503 focused reviews would include a comprehensive review of the contractor's policies and procedures as they relate solely to Section 503. The reviews would also include an on-site investigation and interviews with managers responsible for equal employment opportunity and Section 503 compliance (such as the ADA coordinator) as well as employees affected by those policies. Further, OFCCP would seek to evaluate the handling of accommodation requests, to ensure that individuals with disabilities are not being discriminated against in employment. A VEVRAA focused review would follow the same structure, but concentrating on compliance related to protected veterans.

Compliance Checks are a type of compliance evaluation in which OFCCP seeks to determine whether the contractor has maintained certain records: prior year AAP results, job advertisements (including state employment service listings), and examples of accommodations for individuals with disabilities. During a compliance check, OFCCP will also check the General Services Administration System for Award Management database to determine if a contractor has self-certified that it has AAPs. Contractors may provide the requested documentation either on-site or off-site.

Corporate Management Compliance Evaluations

OFCCP also periodically conducts corporate management compliance evaluations (CMCE). The CMCE essentially follows the same structure as a regular compliance evaluation; however, it is targeted specifically to determining whether qualified minorities, women, persons with disabilities, and protected veterans have encountered artificial barriers to advancement into mid-level and senior corporate management.



Complaint Investigations

OFCCP also conducts investigations of complaints of discrimination that are filed by applicants or employees against federal contractors. OFCCP works in coordination with the EEOC when processing discrimination complaints alleging a Title VII basis (race, color, religion, sex, national origin, or retaliation).

Once a complaint has been accepted by OFCCP, the contractor is notified that an investigation is underway. Depending on the type and scope of the complaint, OFCCP may conduct a focused review involving any combination of off-site and on-site phases, or a full review as necessary. Occasionally, a complaint investigation can indicate a potentially wider issue and may therefore be expanded from a single establishment to corporate-wide. Interviews will be conducted with the complainant(s), relevant management and other employees, and any identified witnesses to the alleged discrimination or harassment, and all pertinent records will be reviewed. As an example, a complaint regarding failure to reasonably accommodate a disability could involve investigative actions such as reviewing the company's policies and procedures, reviewing records regarding any other such requests received and the actions taken, and conducting interviews with various individuals.

Investigations will conclude with a Notice of Results of Investigation (NORI). If no violations are identified, then a "no violation" NORI will be issued, and if the complaint was dual filed under Section 503/ADA or Executive Order 11246/Title VII, a Right-to-Sue letter will also be sent to the complainant. If violations are found, then a "violation" NORI will be issued and OFCCP will seek to remedy the violations through a Conciliation Agreement.

Confidentiality of Records

Under current law and regulations, OFCCP is required to comply with the Freedom of Information Act (FOIA), 5 U.S.C. 552; the Trade Secrets Act, 18 U.S.C. 1905; the Privacy Act, 5 U.S.C. 552a; and Executive Order 12600. These laws govern the disclosure of confidential information, as well as sensitive information, such as personnel records, medical information and salary data. During a compliance evaluation, a CO will handle contractor information that is not available to the general public and that may be sensitive (e.g., social security number, date of birth, employee-level salary data) or nonsensitive (e.g., first and last name, business address, email address) in nature. The CO must treat all information obtained during a compliance evaluation as confidential and protect the security of records to avoid any unauthorized disclosure. The CO is also responsible for the proper handling of Personally Identifiable Information (PII) under the U.S. Department of Labor's 9 DLMS 1200 (Safeguarding Sensitive Data Including Personally Identifiable Information).

Under FOIA, members of the public may request the release of agency records. If a CO receives a request for disclosure of any records obtained from a contractor, the CO must immediately refer the request to OFCCP's designated regional or national FOIA coordinator, as appropriate. The FOIA coordinator must evaluate the request to determine whether any exemptions from

disclosure apply or if the agency is required to release records that OFCCP received from a federal contractor. Before releasing any records provided by the contractor, the FOIA coordinator will notify the contractor of its opportunity to object to a release of records. For instance, OFCCP will notify contractors of any FOIA request for confidential commercial information. If a contractor objects to disclosure, then OFCCP will not disclose the records if OFCCP determines that the contractor's objection is valid. FOIA exemption 4 recognizes the confidentiality of this information and, in combination with FOIA exemption 3 and the Trade Secrets Act, provides the necessary tools to protect it from public disclosure, if appropriate.

Compliance Assistance

To help minimize the occurrence of violations of the laws it enforces, OFCCP has an extensive compliance assistance program to assist Federal contractors. In addition to its National Office in Washington, D.C., OFCCP has a national network of six Regional Offices, located in large metropolitan cities, each with district and area offices through the region. It also has an Ombuds Service, based out of the National Office.

OFCCP has more information about its Ombuds Service available on its website. Please visit <https://www.dol.gov/agencies/ofccp/ombuds>

OFCCP's website (<https://www.dol.gov/ofccp/>) provides transparency for the contractor community and public regarding how OFCCP conducts its activities and interacts with the contractor community. The website provides materials to assist contractors in understanding their obligations and includes a variety of resources. There are also hyperlinks to other pertinent websites and resources. In particular, contractors may find the following information on OFCCP's website to be useful:

- Official links to laws, regulations, and guidance documents such as directives.
- Updates on regulatory developments and changes in the law.
- Answers to frequently asked questions about OFCCP policies and programs.
- Detailed information about the laws enforced by OFCCP, AAPs, compliance assistance, and other topics of interest to contractors.
- Technical assistance guides, infographics, training videos, and webinar recordings and transcripts.
- Our "compliance assistance" page available at <https://www.dol.gov/ofccp/regs/compliance/ofcpcomp.htm>.
- Our Contractor Assistance Portal, available at <https://ofccpcontractor.dol.gov/s/>.



National and Regional Office staff members provide compliance assistance to the contractor community through several avenues, including,

- an Ombuds Service (202-693-1174) to liaise between OFCCP and its stakeholders;
- a Help Desk line (800-397-6251) manned during normal work hours;
- an online portal for inquiries and feedback (<https://dol.secure.force.com/DOLFlowQuestions?agency=OFCCP>);
- seminars and workshops conducted around the country; and
- facilitation of agreements between contractors and Department of Labor job training programs to help identify and recruit qualified workers.

OFCCP is committed to helping contractors achieve compliance right from the start. In addition to periodic training sessions offered by each field office, OFCCP also offers targeted “what to expect next” training to contractors who have received a CSAL. The calendar for routine periodic training can be found on the OFCCP website at <https://www.dol.gov/calendar/>.

OFCCP is also committed to improving contractor training. To ensure effectiveness and contractor engagement, OFCCP recently launched the Contractor Compliance Institute, an online training program.

Conclusion

We hope this guide assists contractors in understanding their obligations as federal supply and service contractors, what to expect during a compliance evaluation or complaint investigation, and what resources are available to assist with their compliance efforts.

APPENDICES



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Appendix A: Of Special Note to Small Federal Supply and Service Contractors

This TAG sets out equal employment opportunity requirements for federal contractors. However, there are areas OFCCP wishes to highlight for smaller contractors.

- As part of the Equal Employment Opportunity clause for all three regulations, contractors and subcontractors who meet the basic nondiscrimination thresholds must post three notices at their workplaces or sites:
 - » “EEO is the Law” Poster
 - » “EEO is the Law” Poster Supplement
 - » Pay Transparency Nondiscrimination Provision

These notices inform applicants and employees of their rights protected by OFCCP and contractors must post them in a place where applicants and employees can access them, including employees working off-site. Federal contracting officers at the agency funding the contract should provide contractors with the necessary posters. If not, they are all available in different formats on the OFCCP website.

As a reminder, the thresholds are federal contracts or subcontracts,

- » singly or combined, exceeding \$10,000 for Executive Order 11246;
- » a single federal contract or subcontract exceeding \$15,000 for Section 503; and
- » a single federal contract or subcontract of \$150,000 or more for VEVRAA.
- Additionally, under both Section 503 and VEVRAA, contractors with more than 50 employees AND a federal contract or subcontract exceeding \$50,000 or \$150,000, respectively, must develop a written EEO policy statement that explains the equal employment opportunity expectations of the company. The EEO policy statement must clearly note that the contractor will not discriminate against applicants or employees based on disability (Section 503) or protected veteran status (VEVRAA). Policy statements must also be:
 - » reviewed and updated annually as part of the written AAP;
 - » posted on bulletin boards in a manner accessible and understandable to employees and applicants; and
 - » posted internally and distributed externally.
- » Information regarding these policy statements may be found at 41 CFR 60-741.44(a) and 60-300.44(a). Contractors subject to both rules also have the option to combine both required statements into one.
- Contractors need to keep personnel and employment records to demonstrate compliance with their EEO obligations for two years. Contractors that have fewer than 150 employees or that have a government contract of less than \$150,000 need only keep the required records for one year.

Small contractors

- Under Executive Order 11246, contractors with 50 employees or more and contracts in excess of \$50,000 are required to develop and maintain a written affirmative action program (AAP). One element of the AAP is the Job Group Analysis, in which contractors combine job titles with similar content, wage rates, and opportunities to form job groups. Contractors may find it useful to use the EEO-1 categories as a starting point, but should then divide them into more specific and descriptive groups. However, **contractors with 100 employees or fewer have the option to use only the nine base EEO-1 categories as their job groups.**
- Section 503 requires that contractors aspire to meet percentage targets for the employment of qualified individuals with disabilities in each job group (as established by the Executive Order 11246 AAP). However, **contractors with 100 or fewer employees have the option to measure the representation of individuals with disabilities by job group or to evaluate the representation of individuals with disabilities for the workforce as a whole.**
- New contractors subject to AAP requirements under any of the three rules must develop the written AAP(s) within 120 days from the start of the contract or subcontract or as soon as they reach 50 or more employees. AAPs are prospective in nature. They establish, in writing, a program for the contractor to follow for one year, with the overall goal of affording equal employment opportunity for minorities and women (Executive Order 11246), individuals with disabilities (Section 503) and protected veterans (VEVRAA).
- OFCCP provides free compliance assistance and products such as posters, templates, frequently asked questions, and technical guides.

For more information on when, why and how to meet your EEO and AAP obligations as a federal supply and service contractor, consult these key regulations.

Equal Opportunity Clauses

- **Executive Order 11246**
41 CFR 60-1.4(a)
- **Section 503**
41 CFR 60-741.5
- **VEVRAA**
41 CFR 60-300.5

AAPs

- **Executive Order 11246**
41 CFR Part 60-2
- **Section 503**
41 CFR 60-741.40 through .47
- **VEVRAA**
41 CFR 60-300.40 through .45

Appendix B: AAP Checklists

Executive Order 11246 AAP Checklist

- An organizational profile of the company's workforce using an "organizational display" or "workforce analysis" that provides detailed data reflecting staffing patterns within the establishment.
- A job group analysis that combines jobs at the establishment with similar content, wage rates, and opportunities to form job groups and facilitates the comparison of the representation of minorities and women in the company's workforce with the estimated availability of minorities and women qualified for employment.
- A utilization analysis that includes the placement of the contractor's employees into the job groups, the determination of the availability for employment of minorities and women for the job groups, and a comparison of their incumbency in the job groups to their availability.
- Established placement goals that serve as reasonably attainable objectives and to measure progress toward achieving equal employment opportunity.
- Designation of responsibility to direct, manage, and ensure the implementation of the affirmative action program.
- Identification of problem areas by organizational unit and job group.
- Description of established action-oriented programs designed to eliminate problems and to accomplish stated goals and objectives.
- Description of an internal audit and reporting system designed to measure the effectiveness of the total affirmative action program.
- Documentation of analyses and support data used to evaluate and identify problem areas.

Section 503 AAP and Utilization Goal Checklist

- A policy statement.
- Confirmation that the contractor reviews personnel processes to ensure they provide equal employment opportunity for individuals with disabilities.
- Confirmation that the contractor reviews physical and mental qualifications of all positions to ensure that, if individuals with disabilities are screened out due to these qualifications, that the qualifications are job-related and consistent with business necessity.
- Confirmation that the contractor is committed to making reasonable accommodations to known physical and mental limitations.
- An anti-harassment statement.
- Description of and documentation on external dissemination of policy, outreach and positive recruitment.
- An assessment of outreach efforts.
- Description of and documentation on internal dissemination of policy.
- Description of and documentation on the contractor's audit and reporting system.
- Designation of responsibility to direct, manage, and ensure the implementation of the affirmative action program training.
- Description of and documentation on the data collection analysis, which requires contractors to document and update annually the:
 - » total number of applicants for all jobs;
 - » total number of applicants hired;
 - » number of applicants who self-identified as or are otherwise known to be individuals with disabilities;

- » number of applicants with disabilities hired; and
- » total number of job openings and jobs filled.
- Documentation of the contractor's annual utilization analysis and assessment of problem areas, and establishment of specific action-oriented programs to address any identified problems related to the mandatory 7% disability utilization goal.

VEVRAA AAP and Hiring Benchmark Checklist

- A policy statement.
- Confirmation that the contractor reviews personnel processes to ensure they provide equal employment opportunity for protected veterans.
- Confirmation that the contractor reviews physical and mental qualifications of all positions to ensure that, if protected veterans are screened out due to these qualifications, that the qualifications are job-related and consistent with business necessity.
- Confirmation that the contractor is committed to making reasonable accommodations to known physical and mental limitations.
- An anti-harassment statement.
- Description of and documentation on external dissemination of policy, outreach and positive recruitment.
- An assessment of outreach efforts.
- Description of and documentation on internal dissemination of policy.
- Description of and documentation on the contractor's audit and reporting system.
- Designation of responsibility to direct, manage, and ensure the implementation of the affirmative action program training.
- Description of and documentation on the data collection analysis, which requires contractors to document and update annually the:
 - » total number of applicants for all jobs;
 - » total number of applicants hired;
 - » number of applicants who self-identified or are otherwise known as protected veterans;
 - » number of protected veteran applicants hired; and
 - » total number of job openings and jobs filled.
- Identification of the Veteran Hiring Benchmark, and if a custom benchmark is established, description of and documentation on the factors used.

Appendix C: Key Words And Phrases

Accommodation

See “Reasonable Accommodation (Disability/Disabled Veteran),” “Reasonable Accommodation (Pregnancy)” and “Religious Accommodation.”

Active Duty Wartime or Campaign Badge Veteran

A veteran who served on active duty in the U.S. military, ground, naval or air service during a war, or in a campaign or expedition for which a campaign badge has been authorized, under the laws administered by the U.S. Department of Defense. See 41 CFR 60-300.2(b).

Adverse Impact

An adverse impact occurs when a contractor’s use of a facially neutral policy or selection procedure (*e.g.*, a test, an interview, a degree requirement, leave or hours policy) disqualifies members of a protected class at a substantially higher rate than others.

Though the terms “adverse impact” and “disparate impact” are sometimes used interchangeably, the Uniform Guidelines on Employee Selection Procedures (UGESP) outlined at 41 CFR 60-3.16B use only the term “adverse impact” and define it as a substantially different rate of selection in hiring, promotion, transferring, training or other employment decision which works to the disadvantage of the members of a race, sex or ethnic group identified in 41 CFR 60-3.4. See “Disparate Impact.”

Affected Class

A group of people sharing common traits or characteristics (*e.g.*, the same race, sex, or ethnicity) who are the victims of systemic discrimination by a particular contractor during a specific timeframe.

Affirmative Action

Actions, policies, and procedures to which a contractor commits itself that are designed to achieve equal employment opportunity. Affirmative action obligations entail thorough, systematic efforts to prevent discrimination from occurring and to detect it and eliminate it as promptly as possible. Affirmative action obligations also require contractors to ensure equal opportunity in their recruitment and outreach efforts.

Affirmative Action Program (AAP)

A management tool designed to ensure equal employment opportunity. The requirements for affirmative action programs that satisfy Executive Order 11246, Section 503 and VEVRAA, are outlined in 41 CFR Part 60-2, 41 CFR Part 60-741, Subpart C, and 41 CFR Part 60-300, Subpart C, respectively. These include requiring a contractor to annually detail the affirmative steps it has taken and will take in the future to ensure equal employment opportunity.

American Indian/Alaskan Native (not Hispanic or Latino)

As defined by the Office of Management and Budget's (OMB's) *Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity*, a person with origins in any of the original peoples of North and South America (including Central America), and who maintains cultural identification through tribal affiliation or has community recognition as an American Indian or Alaskan Native.

Americans with Disabilities Act, as amended (ADA)(Title I)

Title I of the ADA (42 U.S.C. 12101 *et seq.*) prohibits private employers with 15 or more employees, state and local governments, employment agencies, joint labor-management committees, and labor unions from discriminating against qualified individuals on the basis of disability in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment. Section 503 of the Rehabilitation Act and its implementing regulations apply the ADA's nondiscrimination standards to federal contractors.

Applicant

A person who has indicated an interest in being considered for hiring, promotion or other employment opportunity. This interest may be expressed in different ways, such as by completing an application or through an oral statement, depending upon the contractor's practice. An employee of a company may also be an "applicant" when they have indicated an interest in being considered for another job, promotion or employment opportunity within the company. See Question and Answer 15 in the Adoption of Questions and Answers to Clarify and Provide a Common Interpretation of the UGESP, available online at https://www.eeoc.gov/policy/docs/qanda_clarify_procedures.html. See also "Internet Applicant."

Applicant Flow Data (Log)

A chronological compilation of applicants (including internet applicants) for employment or promotion showing each individual, categorized by race, sex and ethnic group, who applied for each job title (or group of jobs requiring similar qualifications) during a specific period. See also "Internet Applicant."

Apprenticeship (Contractor or Industry Specific)

A system of agreement, written or implied, that uses practical experience to train a person in a recognized trade or craft following specified standards.

Armed Forces Service Medal Veteran

Any veteran who, while serving on active duty in the U.S. military, ground, naval or air service, participated in a U.S. military operation for which an Armed Forces Service Medal was awarded under Executive Order 12985 (61 FR 1209). 41 CFR 60-300.2(c).

Asian (not Hispanic or Latino)

As defined by OMB's *Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity* (1997), a person with origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent. This area includes, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam. Under the regulations at 41 CFR Part 60-2, the category is called "Asian/Pacific Islander." Under the regulations at 41 CFR 60-4.3(a)1.d(iii), the category is called "Asian and Pacific Islander."

Basic Qualifications (Internet Applicant)

Basic qualifications is a key concept in the definition of an Internet Applicant. To be considered an Internet Applicant, an individual's expression of interest in a position must indicate that "the individual possesses the basic qualifications for the position." As used in the context of the Internet Applicant defined at 41 CFR 60-1.3.

1. "Basic qualifications" mean qualifications:
 - (a) That the contractor advertises (e.g., posts on its website in a description of the job and the qualifications involved) to potential applicants that they must possess to be considered for the position; or
 - (b) or which the contractor established criteria in advance by making and maintaining a record of such qualifications for the position before considering any expression of interest for that particular position if the contractor does not advertise for the position but, instead uses an alternative device to find individuals for consideration (e.g., through an external resume database); and
2. That meets all of the following three conditions:
 - (a) The qualification must be noncomparative features of a job seeker. For example, three years of experience in a particular position is a noncomparative qualification; a qualification that an individual has one of the top five years of experience among a pool of job seekers is a comparative qualification.
 - (b) The qualifications must be objective; they do not depend on the contractor's subjective judgment. A qualification is objective if a third party, with the contractor's technical knowledge, would be able to evaluate whether the job seeker possesses the qualification without more information about the contractor's judgment. For example, "a bachelor's degree in accounting" is objective while "a technical degree from a good school" is not.
 - (c) The qualifications must be relevant to the performance of the particular position and enable the contractor to accomplish business-related goals.

Black or African American (Not Hispanic or Latino)

As defined by OMB's *Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity* (1997), an individual, not of Hispanic origin, with origins in any of the black racial groups of Africa.

Business Necessity

A defense used by an employer in a disparate impact case, *i.e.*, when it uses an employment policy or practice, such as a selection criterion, that is facially neutral and consistently applied, but that excludes members of one group (*e.g.*, women or African-Americans) at a substantially higher rate than members of other groups. The employer must prove that a policy or practice that has an adverse impact is job-related and consistent with business necessity. Business necessity may also have to be proven when an employer uses a qualification standard that screens out an individual because of their disability. OFCCP uses Title VII, UGESP and ADA standards, as appropriate, when evaluating a contractor's assertion of a business necessity defense.

Coercion

The practice of forcing or pressuring another party to behave in an involuntary manner (whether through action or inaction) by use of threats, intimidation, or other form of pressure or force.

Collective Bargaining Agreement

Also referred to as “bargaining agreement” and sometimes known as a “labor-management agreement” or “union contract.” These terms refer to an agreement between an employer and a union establishing wages, hours, and other terms and conditions of employment for employees in the bargaining unit represented by the union.

Compensation

Any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including, but not limited to, salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing and retirement. See 41 CFR 60-1.3.

Compensation Information

The amount and type of compensation provided to employees or offered to applicants, and information affecting the amount and type of compensation provided or offered, including, but not limited to:

- The desire of the contractor to attract and retain a particular employee for the value the employee is perceived to add to the contractor’s profit or productivity;
- The availability of employees with like skills in the marketplace;
- Market research about the worth of similar jobs in the relevant marketplace;
- Job analysis, descriptions and evaluations;
- Salary and pay structures; salary surveys;
- Labor union agreements; and
- Contractor decisions, statements and policies related to setting or altering employee compensation.

Complaint

An allegation in writing and submitted to OFCCP in writing by, or on behalf of, one or more employees (including former employees) or applicants that alleges the individual or individuals have been victims of discrimination or retaliation that is prohibited by the laws enforced by OFCCP, (i.e., Executive Order 11246, Section 503 or VEVRAA), or that the contractor is violating one or more of these laws, or their implementing regulations.

Compliance Check

A compliance evaluation procedure that involves a determination of whether the contractor has maintained appropriate records consistent with the regulations at 41 CFR 60-1.12, 60-300.80 and 60-741.80.

Compliance Evaluation

The investigation and review process used by OFCCP to determine whether a federal contractor is complying with the nondiscrimination and affirmative action employment obligations outlined in 41 CFR Chapter 60. A compliance evaluation consists of any one, or any combination of, the following investigative procedures: compliance review, off-site review of records, compliance check or focused review. See 41 CFR 60 1.20(a), 60-300.60(a) and 60 741.60(a).

Compliance Officer (CO)

An OFCCP employee whose primary duties typically include conducting compliance evaluations of federal contractors, investigating discrimination complaints filed against federal contractors, providing compliance assistance to federal contractors, and educating community groups and the public about the laws OFCCP enforces. As used in this Manual, all references to the term CO include any OFCCP employee that is responsible for the tasks or activities described.

Compliance Review

A compliance review is a comprehensive analysis and evaluation of the hiring and employment practices of the contractor, any written affirmative action programs the contractor is required to maintain, and the results of the contractor's affirmative action efforts.

Conciliation

Efforts between OFCCP and a contractor to resolve findings of noncompliance or discrimination, usually through a conciliation agreement. See "Conciliation Agreement."

Conciliation Agreement (CA)

A binding written agreement between a contractor and OFCCP that details specific contractor commitments, actions or both to resolve the violations outlined in the agreement.

Construction Contract

Any federal or federally assisted contract for the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings or highways, or other changes or improvements to real property, including facilities providing utility services.

Construction Site

The general physical location of any building, highway or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition or repair; and any temporary location or facility at which a contractor, subcontractor, or other participating party meets a demand or performs a function relating to the contract or subcontract. 41 CFR 60-1.3 (defining "Site of construction").

Construction Work

The construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings or highways; or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection and other on-site functions incidental to the actual construction. 41 CFR 60-1.3.

Contract

See "Government Contract," "Subcontract," "Construction Contract," and "Federally Assisted Construction Contract."

Contracting Agency

Any department, agency, establishment or instrumentality of the U.S. (under Executive Order 11246, limited to the Executive branch), including any wholly-owned government corporation, that enters into a government contract subject to the laws enforced by OFCCP. 41 CFR 60-1.3, 60-300.2, and 60-741.2.

Contractor

Unless otherwise indicated, a “prime contractor” or “subcontractor.” “Prime contractor” means any person holding a contract, or who has held a contract subject to Executive Order 11246, Section 503 or VEVRAA. “Subcontractor” means any person holding a subcontract, or who has held a subcontract subject to Executive Order 11246, Section 503 or VEVRAA. The term “first-tier subcontractor” refers to a subcontractor holding a subcontract with a prime contractor. 41 CFR 60-1.3. See “Government Contract,” “Subcontract,” “Construction Contract,” and “Federally Assisted Construction Contract.”

Covered Area

The geographical area, the Standard Metropolitan Statistical Area (SMSA) or non-SMSA where a federal or federally assisted construction project is being performed. See 45 FR 65976, 65984 and Appendix B-80, October 3, 1980.

Disability

With respect to an individual:

1. A physical or mental impairment that substantially limits one or more of an individual’s major life activities,
2. A record of such an impairment; or
3. Being regarded as having such an impairment.

See 41 CFR 60-741.2(g) and related definitions.

Disabled Veteran

“Disabled Veteran” means:

1. A veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or
2. A person who was discharged or released from active duty because of a service-connected disability.

See 41 CFR 60-300.2(i).

Disadvantaged Business Enterprise

As defined by the Small Business Administration, disadvantaged business enterprises are for-profit small businesses where socially and economically disadvantaged individuals own at least 51% interest and control management and daily business operations. African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, and women are presumed to be socially and economically disadvantaged. Other individuals can also qualify as socially and economically disadvantaged on a case-by-case basis.

Discrimination

See the definitions of “Disparate Impact,” “Disparate Treatment,” “Harassment” and “Retaliation.” Discrimination may also include failure to provide “Religious Accommodation” or “Reasonable Accommodation.”

Disparate Impact

A theory of employment discrimination that focuses on the effect of a practice or policy. Disparate impact discrimination occurs when a contractor's use of a facially neutral policy or practice (*e.g.*, a test, an interview, a degree requirement, a leave or hours policy) disqualifies members of a protected class at a substantially higher rate than others and is not justified by business necessity and job-relatedness (or it is justified by business necessity but there are less-discriminatory alternatives available that would meet the contractor's need). It is not necessary to prove intent to discriminate under this theory of employment discrimination. The disparate impact theory may be used to analyze both objective and subjective selection standards. Compare "Disparate Treatment." See also "Adverse Impact."

Disparate Treatment

Disparate treatment discrimination occurs when a contractor treats an individual or group less favorably on the basis of a prohibited factor (race, color, religion, sex, sexual orientation, gender identity, national origin, disability, status as a protected veteran, or because the individual or group of individuals has disclosed, discussed or inquired about compensation). It is necessary to prove intent to discriminate under this theory of employment discrimination, which is sometimes referred to as "intentional discrimination." Disparate treatment may be proven using direct evidence, circumstantial evidence or a combination of both.

EEO Policy

A written statement made by the contractor to commit to the principles of equal opportunity employment.

EEO-1 Report

The *Employer Information Report EEO-1*. An annual report filed with the Joint Reporting Committee (composed of OFCCP and the Equal Employment Opportunity Commission) by certain employers, including federal contractors with 50 or more employees and a prime contractor first-tier subcontract of \$50,000 or more, subject to Executive Order 11246. This report details specific information, such as the sex, race and ethnic composition of an employer's workforce by job category. This form is also known as Standard Form 100.

Employee (using the "common-law agency test")

OFCCP generally uses the "common-law agency test" for determining who is an employee under the laws OFCCP enforces. The "common-law agency test" examines the individual worker's relationship to the contractor by assessing the following factors derived from a 1992 U.S. Supreme Court decision, *Nationwide Mutual Insurance Co. v. Darden*:

- The contractor's right to control when, where and how the individual performs the job;
- The skill required for the job; the source of the instrumentalities and tools;
- The location of work;
- The duration of the relationship between the parties;
- Whether the contractor has the right to assign additional projects to the individual;
- The extent of the individual's discretion over when and how long to work;
- The method of payment; the contractor's role in hiring and paying assistants;
- Whether the individual's work is part of the regular business of the contractor;
- Whether the individual is in business; and
- The provision of employee benefits to the individual.

While no one factor will necessarily be decisive, the factors that indicate the extent to which the contractor controls the manner and means of the individual's performance of their work will typically be most important in the Darden analysis. The Equal Employment Opportunity Commission also relies on this test to determine whether individuals are employees for Title VII and ADA purposes.

Employment Service Delivery System (ESDS)

The Wagner-Peyser Act of 1933 established a nationwide system of public employment offices known as the "Employment Service." As amended in 1998, the Act makes the Employment Service part of the One-Stop delivery system.

The One-Stop delivery system, also known as American Job Centers, provides universal access to an integrated array of labor exchange services so that workers, job seekers and businesses can find the services they need in one stop and frequently under one roof in easy-to-find locations. The U.S. Department of Labor's Employment and Training Administration oversees Wagner-Peyser.

Enforcement

This term typically refers to an administrative or judicial action to compel compliance with Executive Order 11246, Section 503 or VEVRAA and their implementing regulations, or to compel performance of a conciliation agreement or consent decree.

Equal Employment Opportunity Commission (EEOC)

A federal agency responsible for enforcing federal laws that make it illegal to discriminate in employment against a job applicant or an employee because of the person's race, color, religion, sex, national origin, age (40 or older), disability, genetic information or participation in protected activity (e.g., filing a complaint of discrimination).

Equal Opportunity Clause

The contract clauses published at 41 CFR 60-1.4(a) and (b), 41 CFR 60-300.5(a), and 41 CFR 60-741.5(a) that are required to be included in every covered federal contract and subcontract. The equal opportunity clauses outline contractors' responsibilities under Executive Order 11246, Section 503 and VEVRAA. The applicable equal opportunity clauses are considered to be a part of every covered contract and subcontract whether or not they are incorporated or referenced in the contract, and whether or not there is a written contract between the federal agency and the contractor. See 41 CFR 60-1.4(e), 41 CFR 60-300.5(e), 41 CFR 741.5(e).

Essential Functions (Section 503 or VEVRAA)

For purposes of Section 503 and VEVRAA “essential functions” are fundamental job duties of the employment position the individual with a disability holds or desires. The term “essential functions” does not include the marginal functions of the position. A job function may be considered essential for any of several reasons, including, but not limited to, the following:

- The function may be essential because the reason the position exists is to perform that function;
- The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or
- The function may be highly specialized so that the incumbent in the position is hired for their expertise, or ability to perform the particular function.

Evidence of whether a particular function is essential includes, but is not limited to:

- The contractor's judgment as to which functions are essential;
- Written job descriptions prepared before advertising or interviewing applicants for the job;
- The amount of time spent on the job performing the function;
- The consequences of not requiring the incumbent to perform the function;
- The terms of a collective bargaining agreement;
- The work experience of past incumbents in the job; and/or
- The current work experience of incumbents in similar jobs.

See 41 CFR 60-741.2(i) (Section 503) and 41 CFR 60-300.2(l) (VEVRAA).

Essential Job Functions (pay secrecy)

Essential job functions mean the fundamental job duties of the employment position an individual holds for purposes of evaluating a contractor's “essential job functions defense” to an allegation that it discriminated against an employee because the employee discussed, disclosed or inquired about compensation (see 41 CFR 60-1.35(b)), “essential job functions” means the fundamental job duties of the employment position an individual holds.

A job function may be considered essential if:

- (i) The access to compensation information is necessary to perform that function or another routinely assigned business task; or
- (ii) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

This definition of “essential job functions” may not be used in other contexts under any of the laws enforced by OFCCP. See 41 CFR 60-1.3.

Executive Order 11246

One of the three legal authorities enforced and administered by OFCCP. Executive Order 11246 applies to federal contractors with contracts or subcontracts of more than \$10,000. It prohibits these contractors from discriminating in employment based on race, color, religion, sex, sexual orientation, gender identity, or national origin; or because an applicant or employee has disclosed, discussed or inquired about compensation. The Executive Order also and requires that these contractors take affirmative action to ensure equal employment opportunity.

Executive Order 13496

Executive Order 13496 (74 FR 6107) (February 9, 2009) requires covered contractors and subcontractors to post a notice informing employees of their rights under the National Labor Relations Act (NLRA). The notice to employees informs employees about:

- Their rights under the NLRA to form, join and assist a union and to bargain collectively with their employer;
- Provides examples of unlawful employer and union conduct that interferes with those rights; and
- Indicates how employees can contact the National Labor Relations Board, the federal agency that enforces those rights, with questions or to file complaints.

OFCCP assists the U.S. Department of Labor's Office of Labor-Management Standards in enforcing Executive Order 13496.

Federally Assisted Construction Contract

Any agreement—or modification thereof—for construction work which is paid for at least in part with funds obtained from the federal government or borrowed on the credit of the federal government under any federal program involving a grant, contract, loan, insurance or guarantee; or undertaken under any federal program involving such grant, contract, loan, insurance or guarantee; or any application or modification thereof approved by the federal government for a grant, contract, loan, insurance or guarantee under which the applicant for funds itself participates in the construction work. See 41 CFR 60-1.3. For example, highways and bridges that are constructed, repaired or renovated using funds from the U.S. Department of Transportation are federally assisted construction contracts.

First-Tier Subcontractor

A subcontractor holding a subcontract with a prime contractor.

Focused Review

An on-site review restricted to one or more components of the contractor's organization, or one or more aspects of the contractor's employment practices. See 41 CFR 60 1.20(a)(4), 60-300.60(a)(4), and 60 741.60(a)(4).

Fringe Benefits

Benefits that an employer provides to employees in addition to paying their wages or salary. Examples include, but are not limited to:

- Profit-sharing and bonus plans;
- Leave (e.g., annual vacation days, personal days, sick leave);
- Stock options or awards;
- Medical, hospital, accident and life insurance;
- Long-term and short-term disability benefits;
- Severance benefits;
- Pension or other retirement benefits and early retirement incentives; and
- Other terms, conditions and privileges of employment.

Gender-Based Discrimination

See "Sex Discrimination."

Gender Identity

One's internal sense of one's own gender. It may or may not correspond to the sex assigned to a person at birth and may or may not be made visible to others.

Geographical Area

The Standard Metropolitan Statistical Area (SMSA) or non-SMSA, as designated in the Federal Register by the Secretary of Labor, where a federal or federally assisted construction project is being performed. See 45 FR 65976, 65984 and Appendix B-80, October 3, 1980.

Goals for Minorities and Women, Supply and Service Contractors (Placement Goals)

Placement goals that contractors must establish under Executive Order 11246 for those job groups where minorities or women, or both, are underutilized. The placement goal established must be at least equal to the availability percentage of the underutilized minorities and women for the specific job group. 41 CFR 60-2.16(c); see also 41 CFR 60-2.14, 60-2.15.

Goals for Minorities and Women, Construction Contractors (Participation Goals)

Participation goals for minorities and women under Executive Order 11246, expressed as percentages of the hours worked by the contractor's aggregate workforce, by trade, in the geographic area(s) where a federal or federally assisted construction project is located. See 41 CFR 60-4.6.

Goal for Qualified Individuals with Disabilities (Utilization Goal)

The regulations implementing Section 503 establish a utilization goal of 7% for the employment of qualified individuals with disabilities for each job group in the contractor's workforce. Supply and service contractors use the same job groups that they use for the establishment of placement goals for minorities and women, and covered construction contractors apply the goal to the same trades they use when applying their participation goals under Executive Order 11246. Contractors with 100 or fewer employees have the option of using their entire workforce instead of job groups or trades. See 41 CFR 60-741.45.

Good Faith Efforts

A contractor's appropriate efforts to meet its Executive Order 11246 goals by removing identified barriers, expanding employment opportunities and producing measurable results. See 41 CFR 60-2.16(a), 60-2.17(c) and 60-4.2(d)(2).

Government Contract (or Federal Contract)

A government contractor is an agreement or modification thereof between any contracting agency and any person for the purchase, sale or use of personal property or nonpersonal services between a contracting agency and a person. Personal property includes supplies and contracts for the use of real property (e.g., as lease arrangements), unless the contract for the use of real property itself constitutes real property (e.g., easements). Nonpersonal services include, but are not limited to: utility, construction, transportation, research, and fund depository.

Government contracts do not include:

1. Agreements in which the parties stand in the relationship of employer and employee; and
2. Federally assisted construction contracts.

Harassment

Harassment is unwelcome conduct that is based on a protected characteristic (race, color, religion, sex, sexual orientation, gender identity, national origin, disability, status as a protected veteran, or because an individual disclosed, discussed or inquired about compensation). Harassment becomes illegal if it is so frequent or severe that it creates a hostile or offensive work environment or if it results in an adverse employment decision (such as the victim being fired or demoted). Examples of harassment include slurs, graffiti, offensive or derogatory comments, or other verbal or physical conduct. Sexual harassment may include unwelcome sexual advances, requests for sexual favors and other conduct of a sexual nature. OFCCP's regulations prohibit harassment, intimidation, threats or discrimination because the person filed a complaint, participated in an investigation or compliance evaluation, opposed discrimination or exercised a right protected by OFCCP's regulations.

Hispanic or Latino

As defined by OMB's *Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity* (1997), a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

Impact Ratio Analysis (IRA)

A method for identifying personnel activity that should be investigated further. The IRA is a comparison of the selection rates of different racial, ethnic and sex groups within an identified applicant or candidate pool. If the selection rate for one group is less than 80% of that of the group with the highest rate, then the IRA is considered adverse and further investigation or analysis is needed.

Individual with a Disability

A person with a disability. See "Disability."

Internet Applicant

Any individual as to whom the following four criteria are satisfied:

- The individual submits an expression of interest in employment through the internet or related electronic data technologies;
- The contractor considers the individual for employment in a particular position;
- The individual's expression of interest indicates the individual possesses the basic qualifications for the position; and,
- The individual does not remove him or herself from further consideration or otherwise indicates that they are no longer interested in the position.

Invitation to Self-Identify

An invitation by the contractor, extended to employees and applicants for employment, to voluntarily identify their race, sex, ethnicity, disability, and/or protected veteran status. All information obtained in response to invitations to self-identify as an individual with a disability or protected veteran must be kept in a confidential data analysis file under 41 CFR 60-300.42 and 60-741.42.

Job Description

A written statement detailing the duties of a particular job title.

Layoff

The process by which workers are removed from the active payroll to the inactive payroll.

Linkage

A relationship between a contractor and an appropriate recruitment or training source. Linkages may assist the contractor in its outreach and recruitment efforts, and aid in compliance with its affirmative action obligations.

Local Veterans' Employment Representative

Local veterans' employment representative staff performs outreach to local businesses and employers to advocate for the hiring of veterans.

Mandatory Job Listing (MJL)

A VEVRAA affirmative action obligation that requires covered contractors to list their employment openings (with limited exceptions) with the state workforce agency job bank or with the local employment service delivery system (ESDS) where the opening occurs. Contractors must provide information about the job vacancy in a manner and format permitted by the appropriate ESDS which will allow that system to provide priority referral of veterans protected by VEVRAA for that job vacancy. With their initial listing, contractors must also provide the ESDS with certain information prescribed in the regulations. See 41 CFR 60-300.5(a)2-6.

Minorities

Minorities include individuals who are Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native. As used in this Manual, the term may mean members of these groups in the aggregate or members of an individual group. See 41 CFR 60-2.11(b)(3) and 41 CFR 60-4.3(a)1d.

National Origin

National origin includes:

- Actual or perceived birthplace, ancestry, culture, accent or linguistic characteristics common to a specific ethnic group;
- Marriage or association with persons of a national origin group;
- Membership or association with specific ethnic promotion groups;
- Attendance or participation in schools, churches, temples or mosques generally associated with a national origin group; or
- A surname associated with a national origin group.

Native Hawaiian/Other Pacific Islander

As defined by OMB's *Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity* (1997), a person with origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands. Under the regulations at 41 CFR 60-2.11(b)(3) and 41 CFR 60-4.3(a)1.d(iii), Pacific Islanders are combined with Asians. See "Asian (not Hispanic or Latino)."

Nonfavored Group

The race, ethnic or sex group(s) with the lower selection rates as compared to the group with the highest selection rate when calculating the impact ratio or the level of the statistical disparity. When calculating the impact ratio of unfavorable actions such as terminations, the nonfavored groups are those with higher selection rates. See 41 CFR 60-3.4D.

Off-Site Review of Records

An analysis and evaluation, conducted off the contractor's premises, of the AAP(s), or any part thereof, and supporting documentation; and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether the contractor has complied with the requirements of Executive Order 11246, Section 503 and/or VEVRAA. See 41 CFR 60 1.20(a)(2), 60-300.60(a)(2) and 60 741.60(a)(2).

On-The-Job Training (OJT)

An employer-sanctioned training program, usually at the employer's worksite, in which a trainee works under close supervision or with assistance, designed to teach and qualify an individual to perform a job or element(s) of a job.

Pacific Islander (not Hispanic or Latino)

See "Native Hawaiian/Other Pacific Islander."

Person of Two or More Races (Not Hispanic or Latino)

As defined by the EEOC, for purposes of EEO-1 reports, any person who identifies with more than one race category.

Personnel Practices

Practices or actions taken by management related to decisions regarding their employees (e.g., hiring, firing, layoff, promotion, transfer, demotion, compensation, salary increase, salary decrease, work assignments, benefits).

Physical and Mental Job Qualifications

Physical and mental standards that an employer requires an employee or applicant to meet to qualify for the job.

Pregnancy Accommodation

See "Reasonable Accommodation (Pregnancy)."

Pregnancy Discrimination

Discrimination based on pregnancy, childbirth or related medical conditions, including childbearing capacity, which constitutes unlawful sex discrimination under Executive Order 11246. Contractors must treat people of childbearing capacity and those affected by a pregnancy, childbirth or related medical conditions the same for all employment-related purposes, including receipt of benefits under fringe-benefit programs, as other persons not so affected, but similar in their ability or inability to work. See 41 CFR 60-20.5.

Problem Areas

Aspects of the contractor's employment decisions, policies or practices that raise questions regarding the contractor's compliance with Executive Order 11246, Section 503 or VEVRAA.

Prohibited Basis or Prohibited Factor

A basis or factor prohibited by law from being used in making employment decisions. Under Executive Order 11246, as amended, the prohibited bases or factors:

- Race,
- Color,
- Religion,
- Sex,
- Sexual orientation,
- Gender identity, and
- National origin.

Under Section 503, the prohibited basis or factor is a disability. Under VEVRAA, the prohibited basis or factor is status as a protected veteran.

Promotion

Any personnel action resulting in, for example, the movement to a position affording higher pay, greater rank, change in job title, or increase in job grade; an increase in pay, requiring greater skill or responsibility; or the opportunity to attain such. A promotion may be either competitive or noncompetitive.

Protected Group or Category

The bases on which applicants and employees are protected from discrimination in employment under the laws enforced by OFCCP (also referred to as "prohibited factors" or "prohibited bases"): race, color, religion, sex, sexual orientation, gender identity, national origin, disability and status as a protected veteran.

Protected Veteran

Any veteran who is protected by VEVRAA. To be a "protected veteran," a veteran must meet the criteria of one or more of the following four categories:

- Disabled veteran;
- Recently separated veteran;
- Active duty wartime or campaign badge veteran; and
- Armed Forces service medal veteran.

See 41 CFR 60-300.2(q) and related definitions.

Qualified Individual (with a Disability)

An individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position the individual holds or desires, and who with or without reasonable accommodation can perform the essential functions of such position. See 41 CFR 60-741.2(r). For exceptions to this definition, see 41 CFR 60-741.3.

Race or Color

Race or color includes personal characteristics associated with a particular race, such as hair texture, certain facial features, and skin color and complexion. Race or color may also include marriage to or association with a person of a certain race or color, or association with an organization or group that is generally associated with people of a certain race or color.

Reasonable Accommodation (Disability/Disabled Veteran))

A contractor must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability. A contractor is not required to provide reasonable accommodation to an individual who satisfies only the “regarded as” prong of the definition of disability, and does not have a disability or a record of a disability.

The term reasonable accommodation means modifications or adjustments:

- To a job application process that enables a qualified applicant with a disability to be considered for the position the applicant desires;
- To the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
- That enables the contractor’s employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by the contractor’s other similarly situated employees without disabilities.

See 41 CFR 60-741.2(s)(1). For the comparable definition under VEVRAA, see 41 CFR 60-300.2(t)(1). For examples of reasonable accommodations, see 41 CFR 60-741.2(s)(2) and 41 CFR 60-300.2(t)(2).

Reasonable Accommodation (Pregnancy)

Alternative job assignments, modified duties or other accommodations needed by employees who are unable to perform some of their job duties because of pregnancy, childbirth or related medical conditions. Contractors may be required to provide such accommodations. See 41 CFR 60-20.5(c).

Reasonable Accommodation (Religion)

See “Religious Accommodation.”

Recall

The process or action by which workers are returned to active employment from layoff.

Recently Separated Veteran

Any veteran during the three-year period beginning on the date of such veteran’s discharged or released from active duty in the U.S. military, ground, naval or air service in the last three years. See 41 CFR 60-300.2(u).

Recruitment Source

Any person, organization or agency used to refer or provide workers for employment.

“Regarded As” Having an Impairment

This is one of the three prongs of the definition of “disability.” An individual is “regarded as” having a physical or mental impairment when the individual is subjected to a discriminatory action because of an actual or perceived physical or mental impairment that is neither transitory (*i.e.*, has an actual or expected duration of six months or less) nor minor - whether or not the impairment substantially limits, or is perceived to substantially limit, a major life activity. See 41 CFR 60-741.2(v). An individual who satisfies only the “regarded as” prong of the definition of “disability” (*i.e.*, does not also have an actual disability or a record of a disability) is not entitled to receive reasonable accommodation. See 41 CFR 60-741.2(s)(4).

Rehire

To employ a formerly employed worker after a complete break in employment status. Compare with “Recall.”

Religious Accommodation

A nondiscrimination obligation of a contractor to accommodate the sincerely held religious observances and practices of its current and prospective employees. Typical religious accommodations include, but are not limited to, permitting the wearing of religious head coverings and other religious dress at the workplace, swapping employee shifts or permitting work breaks or time off to allow for religious observance, and modifying an employee’s work schedule to permit observance of the employee’s Sabbath. A contractor does not have to accommodate an employee’s religious observances or practices if doing so would cause it undue hardship. See the definition of “Undue Hardship (Religious Accommodation).”

Section 503

Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793. One of the three legal authorities enforced and administered by OFCCP. Section 503 applies to federal contractors with a contract or subcontract of more than \$15,000. However, it does not apply to federally-assisted construction contracts. Section 503 prohibits covered federal contractors from discriminating in employment on the basis of disability and requires that they take affirmative action to ensure equal employment opportunity. Covered federal contractors and subcontractors with 50 or more employees and a contract of \$50,000 or more have additional affirmative action obligations that include the development of a written affirmative action program.

Seniority

Length of employment as determined by the employer’s policies or the applicable collective bargaining agreement. Seniority may be defined in various terms (*e.g.*, company seniority, facility seniority, departmental seniority). Employees may have different types of seniority for different purposes (*e.g.*, job bidding rights governed by department seniority and leave accrual rights governed by company seniority).

Sexual Orientation

An individual’s physical, romantic and/or emotional attraction to people of the same and/or opposite gender. Examples of sexual orientations include straight (or heterosexual), lesbian, gay and bisexual.

Similarly Situated

Employees are similarly situated when they are comparable on the factors relevant to the investigation or analysis, even if they are not comparable on others. Relevant factors in determining similarity may include tasks performed, skills, effort, level of responsibility, working conditions, job difficulty, minimum qualifications or other objective factors. The determination of which employees are similarly situated is case specific. Thus, employees who are similarly situated for one purpose may not be similarly situated for another.

Standard Form 100

See “EEO-1 Report.”

Standard Metropolitan Statistical Area (SMSA)

Statistical area that refers to a geographical region with a relatively high population density at its core and close economic ties throughout the area.

Statistical Evidence

Statistical evidence means hypothesis testing, controlling for the major legitimate, nondiscriminatory measureable parameters and variables used by employers (including, as appropriate, other demographic variables, test scores, geographic variables, performance evaluations, years of experience, quality of experience, years of service, quality and reputation of previous employers, years of education, years of training, quality and reputation of credentialing institutions, etc.), related to the probability of outcomes occurring by chance and/or analyses reflecting statements concluding that a difference in employment selection rates or compensation decisions is statistically significant by reference to any one of the following equivalent statements: 1) the disparity is two or three times larger than its standard error (i.e., a standard deviation of two or more); 2) the Z statistic has a value greater than two or three; or 3) the probability value is less than 0.05 or 0.01. See also “Anecdotal Evidence” and “Nonstatistical Evidence.”

Subcontract

Any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

- For the purchase, sale or use of personal property or nonpersonal services which, in whole or in part, is necessary to the performance of any one or more government contracts; or
- Under which any portion of the contractor’s obligation under one or more government contracts is performed, undertaken or assumed.

See 41 CFR 60-1.3, 41 CFR 60-300.2(x), and 41 CFR 60-741.2(x).

Subcontractor

Any person holding a covered subcontract and, for enforcement purposes, this also includes any person who has held a subcontract subject to Executive Order 11246, Section 503 or VEVRAA. See 41 CFR 60-1.3, 41 CFR 60-300.2(y) and 41 CFR 60-741.2(y).

Subjective Criterion

An employment qualification, selection standard or process is subjective if it requires judgment in its application, such that different people applying the standard would not necessarily reach the same conclusion. Whether an applicant is certified to operate a particular machine is objective; whether an applicant has “good machine-handling skills and experience” is subjective. Compare with “Objective Criterion.”

Support Data

Statistical data, documentation and other materials regarding a contractor’s employment policies, practices and actions used in the development, support and justification of its affirmative action program(s), or used to assess the affirmative action program’s effectiveness.

Systemic Discrimination

Systemic discrimination involves a pattern or practice, policy or class case where the alleged discrimination has a broad impact on an industry, profession, company or geographic area. Examples of systemic practices include: discriminatory barriers in recruitment and hiring, discriminatorily restricted access to management trainee programs and high-level jobs, exclusion of qualified women from traditionally male-dominated fields of work, and disability discrimination such as unlawful pre-employment inquiries. There is no specific numeric threshold used to define a systemic case.

Termination of Employment

Separation of an employee from the active and inactive payroll.

Terms and Conditions of Employment

All aspects of the employment relationship between an employee and their employer, including, but not limited to, hiring, compensation, fringe benefits, leave policies, job placement, work environment, work-related rules, work assignments, training and education, and opportunities for promotion.

Title VII of the Civil Rights Act of 1964 (Title VII)

This law is enforced by EEOC and its principles generally apply to discrimination cases arising under Executive Order 11246. Title VII prohibits discrimination in employment on the basis of race, color, religion, national origin or sex. Title VII applies to private employers with 15 or more employees. It also generally applies to state and local government agencies, federal government agencies, employment agencies and labor unions that either operate a hiring hall or have at least 15 members.

Transfer

Movement (usually lateral) of an employee from one position or function to another.

Undue Hardship (Disability)

“Undue hardship” is the only defense for failing to make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability. The employer must demonstrate that the accommodation would cause it “significant difficulty or expense” in light of its particular resources and circumstances. Undue hardship refers not only to financial difficulty, but also to reasonable accommodations that are unduly extensive, substantial or disruptive, or those that would fundamentally alter the nature or operation of the business. See 41 CFR 60–300.2(aa) and 60-300 Appendix A, and 41 CFR 60-741.2(aa) and 60-741 Appendix A. Whether an accommodation would impose an undue hardship requires a case-by-case determination. See 41 CFR 60-300.2(aa)(2) and 60-741.2(aa)(2) for factors to be considered.

Undue Hardship (Religious Accommodation)

“Undue hardship” is the defense for not providing a needed religious accommodation. To demonstrate “undue hardship” in this context, a contractor must show that providing the proposed accommodation would pose “more than de minimis” cost or burden. Costs to be considered include not only direct monetary costs, but also the burden on the conduct of the employer’s business. For example, courts have found undue hardship where the accommodation diminishes efficiency in other jobs, infringes on other employees’ job rights or benefits, impairs workplace safety, or causes co-workers to carry the accommodated employee’s share of potentially hazardous or burdensome work.

Uniformly Applied

Applying employment criteria or processes in the same manner to all similarly situated applicants or employees.

Uniform Guidelines on Employee Selection Procedures (UGESP)

Guidelines developed by the EEOC, U.S. Department of Justice, U.S. Department of Labor and the Civil Service Commission (now the Office of Personnel Management) to provide a single set of principles that are designed to assist employers, labor organizations, employment agencies, and licensing and certification boards to comply with requirements of federal law prohibiting employment practices that discriminate on grounds of race, color, religion, sex and national origin. See 41 CFR Part 60-3. Under Executive Order 11246, UGESP was promulgated as regulations with the force and effect of law. UGESP does not apply to Section 503 or VEVRAA.

Validation

The demonstration of job-relatedness by showing the relationship between the selection procedure and job performance. To be validated in accordance with UGESP, the validation studies must meet the technical standards set out in 41 CFR Part 60-3.

Veteran

A person who served in the active military, naval or air service of the U.S., and who was discharged or released therefrom under conditions other than dishonorable. See 41 CFR 60-300.2(cc).

VETS-4212 Report

Each contractor and subcontractor subject to VEVRAA is required to file the VETS-4212 report with the U.S. Department of Labor's Veterans' Employment and Training Service (VETS) on an annual basis. The report details the number of protected veterans the contractor employs, or has newly hired, by hiring location and EEO-1 job category. For more information on the VETS-4212 report, please visit <https://www.dol.gov/agencies/vets/programs/vets4212>.

VEVRAA

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212). One of the three legal authorities enforced and administered by OFCCP. VEVRAA applies to federal contractors with a contract or subcontract of \$150,000 or more. However, it does not apply to federally-assisted construction contractors. VEVRAA prohibits covered federal contractors from discriminating in employment based on status as a protected veteran and requires that they take affirmative action to ensure equal employment opportunity. Federal contractors and subcontractors with 50 or more employees and a contract of \$150,000 or more have additional affirmative action obligations that include the development of a written affirmative action program.

Violation

Failure to fulfill a requirement of the Executive Order 11246, Section 503 or VEVRAA, or their implementing regulations.

White (not Hispanic or Latino)

As defined by OMB's *Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity* (1997), an individual, not of Hispanic origin, with origins in any of the original peoples of Europe, North Africa or the Middle East.

Work Assignment

A position or post of duty to which one is assigned or a task one is required to perform.

Appendix D: Glossary of Abbreviations

AA	Affirmative Action
AAP	Affirmative Action Program
ACS	American Community Survey
ADA	Americans with Disabilities Act
ADD	Assistant District Director
ALJ	Administrative Law Judge
AmInd/AlNat	American Indian/Alaskan Native
AO	Area Office
APA	Administrative Procedure Act
ASCN	Amended Show Cause Notice
Asian/PI	Asian American/Pacific Islander
BFOQ	Bona Fide Occupational Qualification
BLS	Bureau of Labor Statistics
CA	Conciliation Agreement
CBA	Collective Bargaining Agreement
CEO	Chief Executive Officer
CFR	Code of Federal Regulations
CMCE	Corporate Management Compliance Evaluation
CMS	Case Management System
CO	Compliance Officer
CC-4	Complaint Form titled “Complaint Involving Employment Discrimination by a Federal Contractor or Subcontractor”
CC-53	Case Chronology Log
CY	Current Year
DD	District Director
DD-214	U.S. Department of Defense form that identifies the veteran’s condition of discharge—honorable, general, other than honorable, dishonorable or bad conduct
DO	District Office
DOJ	U.S. Department of Justice
DOL	U.S. Department of Labor
DOT	U.S. Department of Transportation
DPO	Division of Program Operations
EDGAR	Electronic Data Gathering, Analysis and Retrieval

EEDS	Equal Employment Data System
EEO	Equal Employment Opportunity
EEO Tab	EEO Tabulation
EEO-1	Standard Form 100 – Employer Information Report
EEOC	Equal Employment Opportunity Commission
EIS	Executive Information System
ERRD	Employment Referral Resource Directory
ESDS	Employment Service Delivery System
ETA	Employment and Training Administration
FAAP	Functional Affirmative Action Program
FCCM	Federal Contract Compliance Manual
FCSS	Federal Contractor Selection System
FEP	Fair Employment Practices
FICA	Federal Insurance Contributions Act
FMLA	Family and Medical Leave Act
FOIA	Freedom of Information Act
FR	Federal Register
FUTA	Federal Unemployment Tax Act
GSA	General Services Administration
HRIS	Human Resources Information System
INAERP	Indian and Native American Employment Rights Program
IPEDS	Integrated Postsecondary Education Data System
IRA	Impact Ratio Analysis
IRS	Internal Revenue Service
JAAR	Job Area Acceptance Range
JRC	Joint Reporting Committee
LVER	Local Veterans' Employment Representative – See VWS
MJL	Mandatory Job Listing
MOU	Memorandum of Understanding
MSA	Metropolitan Statistical Area
NAICS	North American Industrial Classification System (replaced SIC)
NLRA	National Labor Relations Act
NORI	Notice of Results of Investigation
NOV	Notice of Violation
NSOL	National Solicitor of Labor

O*NET	Occupational Information Network
ODEP	Office of Disability Employment Policy
OFCCP	Office of Federal Contract Compliance Programs
OFIS	OFCCP Information System
OLMS	Office of Labor-Management Standards
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
PDN	Predetermination Notice
PII	Personally Identifiable Information
PY	Prior Year
RD	Regional Director
RO	Regional Office
ROC	Regional Office Outreach Coordinator
RSOL	Regional Solicitor of Labor
S&S	Supply and Service
SAM	System for Award Management
SCER	Standard Compliance Evaluation Report
SCN	Show Cause Notice
SEC	Securities and Exchange Commission
Section 503	Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793), as amended
SMSA	Standard Metropolitan Statistical Area
SOL	Solicitor of Labor
SSEG	Similarly Situated Employee Group
TERO	Tribal Employment Rights Office
Title VII	Title VII of the Civil Rights Act of 1964, as amended
UGESP	Uniform Guidelines on Employee Selection Procedures
VETS	Veterans' Employment and Training Service
VEVRAA	Vietnam Era Veterans' Readjustment Assistance Act, as amended
WHD	Wage and Hour Division

Appendix E: U.S. Small Business Administration's Ombudsman Program

Office of the National Ombudsman

The National Ombudsman's mission is to assist small businesses when they experience excessive or unfair federal regulatory enforcement actions, such as repetitive audits or investigations, excessive fines, penalties, threats, retaliation or other unfair enforcement action by a federal agency.

Congress established the Office of the National Ombudsman in 1996 as part of the Small Business Regulatory Enforcement Fairness Act (SBREFA). The Act ensures that businesses, small government entities, and small nonprofit organizations that experience unfair regulatory enforcement actions by federal agencies have a means to comment about such actions.

As an impartial liaison, the Office of the National Ombudsman directs reported regulatory fairness matters to the appropriate agency for high-level fairness review, and works across government to address those concerns, reduce regulatory burdens, and help small businesses succeed.

The National Ombudsman can help:

- If you are a small business or represent one, a non-profit organization, or a small government entity (population 50,000 or less), and
- If your comment or complaint directly involves a federal agency and federal regulation.

For more information about SBA's Office of National Ombudsman please contact the office at:

Office of Ombudsman

409 3rd Street, S.W. Suite 7125

Washington, DC 20416

Fax: (202) 481-5719

TTY/TTD: 800-877-8339

Toll Free: 888-734-3247

Website: <https://www.sba.gov/ombudsman>

Appendix F: OFCCP National and Regional Offices

Regional Office Contact Information

Mid-Atlantic Region

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia
 U.S. Department of Labor—OFCCP
 Curtis Center
 170 South Independence Mall West,
 Suite 650 South
 Philadelphia, PA 19106
 Main Line: (215) 861-5765
 Fax Line: (215) 861-5769

Midwest Region

Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin
 U.S. Department of Labor—OFCCP
 230 South Dearborn Street, Room 570
 Chicago, IL 60604
 Main: (312) 596-7010
 Fax: (312) 596-7036

Northeast Region

New Jersey, New York, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Puerto Rico, and Virgin Islands
 U.S. Department of Labor—OFCCP
 201 Varick Street, Room 750
 New York, NY 10014
 Main: (646) 264-3170
 Fax: (646) 264-3009

Pacific Region

Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington, Guam, American Samoa, and the Northern Mariana Islands
 U.S. Department of Labor—OFCCP
 90 7th Street, Suite 18-300
 San Francisco, CA 94103
 Main: (415) 625-7800
 Fax: (415) 625-7799

Southeast Region

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee
 U.S. Department of Labor—OFCCP
 61 Forsyth Street, S.W., Suite 7B75
 Atlanta, GA 30303-8931
 Main: (404) 893-4545
 Fax: (404) 893-4546

Southwest and Rocky Mountain Region

Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming
 U.S. Department of Labor—OFCCP
 A. Mateo Smith Federal Building
 525 South Griffin St., Room 840
 Dallas, TX 75202
 Main: (972) 850-2550
 Fax: (972) 850-2552

Appendix G: Sample Notice to Unions

Contractors subject to OFCCP's equal opportunity clauses also have a duty to notify labor unions that they are bound by their federal contracts and committed to take affirmative action to employ and advance in employment, and not discriminate against applicants and employees protected by the covered bases of Executive Order 11246, Section 503, and VEVRAA. The below is a sample notice that would satisfy this OFCCP requirement.

"[Insert company] is bound contractually by the terms of Executive Order 11246, Section 503 of the Rehabilitation Act, and the Vietnam Era Veterans' Readjustment Assistance Act. Together, these laws require [insert company] to not discriminate and take affirmative action to treat applicants and employees without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, and status as a protected veteran. Executive Order 11246 also prohibits discharging or in any other manner discriminating against an applicant or employee for discussing, disclosing or inquiring about compensation or compensation information, with limited exceptions. Attached is the EEO is the Law Poster, the EEO is the Law Poster Supplement, and the Pay Transparency Nondiscrimination Provision which [insert contractor] uses to provide notice of these rights to applicants and employees."

Appendix H: Equal Opportunity Clauses – Incorporation by Reference

Incorporation of **Executive Order 11246** Equal Opportunity Clause by reference in Subcontract or Purchase Order:

- This contractor and subcontractor shall abide by the requirements of 41 CFR 60–1.4(a). These regulations prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing information about compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity and national origin.

Incorporation of **Executive Order 11246** and **Section 503** Equal Opportunity Clauses by reference in Subcontract or Purchase Order:

- This contractor and subcontractor shall abide by the requirements of 41 CFR 60–1.4(a) and 60–741.5(a). These regulations prohibit discrimination against qualified individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing information about compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, or disability.

Incorporation of **Executive Order 11246**, **Section 503** and **VEVRAA** Equal Opportunity Clauses by reference in Subcontract or Purchase Order:

- This contractor and subcontractor shall abide by the requirements of 41 CFR 60–1.4(a), 60–300.5(a) and 60–741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing information about compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

Appendix I: Equal Opportunity Clauses

This appendix reproduces equal opportunity clauses found in OFCCP's regulations at 41 CFR 60-1.4(a), 41 CFR 60-1.4(b), 41 CFR 60-300.5(a), and 41 CFR 60-741.5(a). More information about the requirements can be found in the regulations and in this TAG on page 124.

Executive Order 11246

41 CFR 60-1.4(a). Equal Opportunity Clause for Executive Order 11246 (Direct Federal Contracts)

Except as otherwise provided, each contracting agency shall include the following equal opportunity clause contained in section 202 of the order in each of its Government contracts (and modifications thereof if not included in the original contract).

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

41 CFR 60-1.4(b). Equal Opportunity Clause for Executive Order 11246 (Federally Assisted Construction Contracts)

Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause.

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their

race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which they have a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

- (2) [Reserved]

VEVRAA**41 CFR 60-300.5(a). Equal Opportunity Clause for VEVRAA Protected Veterans**

Each contracting agency and each contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract).

EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS

1. The contractor will not discriminate against any employee or applicant for employment because they are a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran (hereinafter collectively referred to as “protected veteran(s)”) in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices, including the following:
 - i. Recruitment, advertising, and job application procedures.
 - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.
 - iii. Rates of pay or any other form of compensation and changes in compensation.
 - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
 - v. Leaves of absence, sick leave, or any other leave.
 - vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor.
 - vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.
 - viii. Activities sponsored by the contractor including social or recreational programs.
 - ix. Any other term, condition, or privilege of employment.
2. The contractor agrees to immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, with the appropriate employment service delivery system where the opening occurs. Listing employment openings with the state workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service delivery system. In order to satisfy the listing requirement described herein, contractors must provide information about the job vacancy in any manner and format permitted by the appropriate employment service delivery system which will allow that system to

provide priority referral of veterans protected by VEVRAA for that job vacancy. Providing information on employment openings to a privately run job service or exchange will satisfy the contractor's listing obligation if the privately run job service or exchange provides the information to the appropriate employment service delivery system in any manner and format that the employment service delivery system permits which will allow that system to provide priority referral of protected veterans.

3. Listing of employment openings with the appropriate employment service delivery system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a *bona fide* job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.
4. Whenever a contractor, other than a state or local governmental contractor, becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this clause, it shall advise the employment service delivery system in each state where it has establishments that: (a) It is a Federal contractor, so that the employment service delivery systems are able to identify them as such; and (b) it desires priority referrals from the state of protected veterans for job openings at all locations within the state. The contractor shall also provide to the employment service delivery system the name and location of each hiring location within the state and the contact information for the contractor official responsible for hiring at each location. The "contractor official" may be a chief hiring official, a Human Resources contact, a senior management contact, or any other manager for the contractor that can verify the information set forth in the job listing and receive priority referrals from employment service delivery systems. In the event that the contractor uses any external job search organizations to assist in its hiring, the contractor shall also provide to the employment service delivery system the contact information for the job search organization(s). The disclosures required by this paragraph shall be made simultaneously with the contractor's first job listing at each employment service delivery system location after the effective date of this final rule. Should any of the information in the disclosures change since it was last reported to the employment service delivery system location, the contractor shall provide updated information simultaneously with its next job listing. As long as the contractor is contractually bound to these provisions and has so advised the employment service delivery system, there is no need to advise the employment service delivery system of subsequent contracts. The contractor may advise the employment service delivery system when it is no longer bound by this contract clause.
5. The provisions of paragraphs 2 and 3 of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.

6. As used in this clause:

- i. *All employment openings* includes all positions except executive and senior management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.
- ii. *Executive and senior management* means: (1) Any employee (a) compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities; (b) whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (c) who customarily and regularly directs the work of two or more other employees; and (d) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight; or (2) any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.
- iii. *Positions that will be filled from within the contractor's organization* means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of their own organization.

7. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

8. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

9. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are protected veterans. The contractor must ensure that applicants or employees who are disabled veterans are provided the notice in a form that is accessible and understandable to the disabled veteran (*e.g.*, providing Braille or large print versions of the notice, posting the notice for visual accessibility to persons in wheelchairs, providing the notice electronically or on computer disc, or other versions). With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise are able to access the electronically

posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

10. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by the terms of VEVRAA, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, protected veterans.
11. The contractor will include the provisions of this clause in every subcontract or purchase order of \$100,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to VEVRAA so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.
12. The contractor must, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their protected veteran status.

Section 503

41 CFR 60-741.5(a). Equal Opportunity Clause for Workers with Disability

Each contracting agency and each contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract).

EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES

1. The contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:
 - i. Recruitment, advertising, and job application procedures;
 - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 - iii. Rates of pay or any other form of compensation and changes in compensation;
 - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - v. Leaves of absence, sick leave, or any other leave;

- vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor;
 - vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - viii. Activities sponsored by the contractor including social or recreational programs; and
 - ix. Any other term, condition, or privilege of employment.
2. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
 3. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
 4. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The contractor must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers, or access to computers, that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.
 5. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

6. The contractor will include the provisions of this clause in every subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.
7. The contractor must, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

Appendix J: Construction Contract Award Notification Requirement

Instructions

Construction contractors are required to give written notice to OFCCP within 10 working days of awarding any construction subcontract more than \$10,000 at any tier for construction work performed under a federal or federally assisted construction contract, as required by 41 CFR §§ 60-4.1 and 4.2(d)(3). Federal contracting officers, applicants of federal assistance, and covered nonconstruction contractors are also required to give written notice to OFCCP within 10 working days of awarding a construction contract more than \$10,000, as required by 41 CFR § 60-4.2(c).

Submit completed forms via email to the OFCCP Regional office covering the state where the work will be performed. This form is an OMB-approved form and, as such, its content cannot be altered or changed. To be acceptable, all fields must be complete and accurate except those noted as optional.

Northeast

OFCCP-NE-ConstructionAward@dol.gov

Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, Puerto Rico, and Virgin Islands

Mid-West

OFCCP-MW-ConstructionAward@dol.gov

Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin

Mid-Atlantic

OFCCP-MA-ConstructionAward@dol.gov

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia

Southwest and Rocky Mountain

OFCCP-SW-ConstructionAward@dol.gov

Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming

Southeast

OFCCP-SE-ConstructionAward@dol.gov

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

Pacific

OFCCP-PA-ConstructionAward@dol.gov

Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands

Form CC-314

OMB Control Number: 1250-0001

Expires: 04/30/2021

NOTIFICATION OF CONSTRUCTION CONTRACT AWARD IN EXCESS OF \$10,000

Prime Contract Number: _____

Award Notification Submitted on Behalf of (select one):

☐

Federal Agency

☐

Applicant

☐

Contractor

NAME OF AWARDING FEDERAL AGENCY, APPLICANT OR CONTRACTOR: _____**CONTRACTING OFFICER, APPLICANT REPRESENTATIVE OR CONTRACTOR REPRESENTATIVE SUBMITTING NOTIFICATION**

First Name: _____

Last Name: _____

Telephone Number: _____ Telephone Extension (optional): _____

Email: _____

CONTRACTOR AWARDED CONTRACT OR SUBCONTRACT

Name: _____

Address Line 1: _____

Address Line 2: _____

City: _____ State: _____ ZIP*: _____

Telephone Number: _____ Telephone Extension (optional): _____

Employer Identification Number (EIN): _____

CONTRACT INFORMATION

Dollar Amount of Contract: _____

Estimated Start Date of Contract: _____ Estimated Complete Date of Contract: _____

GEOGRAPHICAL AREA IN WHICH THE CONTRACT IS TO BE PERFORMED

State: _____ County: _____ City (optional): _____

The Paperwork Reduction Act of 1995 provides that no person is required to respond to a federal collection of information unless it displays a valid OMB Control Number. The estimated reporting burden to identify the necessary information and send it to OFCCP is 30 minutes. If you have comments regarding the estimated burden, or suggestions for reducing the burden, please send them to the OFCCP, Division of Policy and Program Development, 200 Constitution Avenue, N.W., Room C-3325, Washington, D.C. 20210 and reference OMB Control Number 1250-0001. Please do not send the completed form to this address.

Appendix K: Legal Notices for Bids and Contracting Documents

This appendix reproduces legal notices found in OFCCP's regulations at 41 CFR 60-4.2(d) and 41 CFR 60-4.3(a). More information on when these notices are required can be found in the regulations and in this guide on page 9.

41 CFR 60-4.2(d). Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

The following notice shall be included in, and shall be a part of, all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to §60-4.6 of this part (see 41 CFR 60-4.2(a)).

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

TIME TABLES	
Goals for minority participation for each trade	Goals for female participation for each trade
Insert goals for each year.	Insert goals for each year.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the “covered area” is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

41 CFR 60-4.3(a). Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

All Federal contracting officers, all applicants and all nonconstruction contractors, as applicable, shall include the specifications below in all Federal and federally assisted construction contracts in excess of \$10,000 and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of nonconstruction Federal contracts and subcontracts covered under the Executive order.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:
 - a. “Covered area” means the geographical area described in the solicitation from which this contract resulted;
 - b. “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. “Employer identification number” means the Federal Social Security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. “Minority” includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (*e.g.*, mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (*e.g.*, those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Appendix L: Examples of Records Contractors Must Retain

Also see Appendices M and N on maintaining applicant records.

- **Executive Order 11246:** 41 CFR 60-1.12; 41 CFR 60-3.4 and 3.15.
- **Section 503:** 41 CFR 60-741.44(f)(4) and (k); 41 CFR 60-741.80.
- **VEVRAA:** 41 CFR 60-300.44(f)(4) and (k); 41 CFR 60-300.45(c); 41 CFR 60-300.80.

Records that contractors maintain under Executive Order 11246 must include the gender, race, and ethnicity of each employee, and where possible, the gender, race, and ethnicity of each applicant or Internet Applicant as applicable. 41 CFR § 60-1.12(c); see 41 CFR § 60-1.3. This requirement is noted for some of the record types listed.

Note: This list is not all-inclusive.

Recruitment

- Letters and Vacancy Announcements sent to recruitment sources
- Employment Openings sent to local American Job Centers or State Workforce Agency Job Bank
- List of Recruitment Sources for Women, Minorities, Individuals with Disabilities, Protected Veterans
- Written Recruitment Policies
- Documentation of Outreach Efforts under Section 503 and VEVRAA

Hiring

- Job Analysis
- Job Description
- Recruitment Plan
- Job Requisitions
- Disposition Codes
- Vacancy Announcements
- New Position Form
- Selection Criteria for Job Openings
- Minimum and Preferred Job Qualifications
- Documentation of Data Management Techniques utilized to review resumes (e.g., dates of resume searches, keywords used, numbers of resumes requested.)
- Expressions of Interest in employment
- Applications
- Resumes
- Applicant Logs with race, ethnicity and sex data
- Hiring Logs with race, ethnicity and sex data
- Interview Notes, including ratings and scores
- Interview Questionnaires
- Test(s) Used in Selection Process
- Results of Test(s) Used in Selection Process
- Manuals on the administration of the test(s)
- Copies of validity studies conducted on selection procedures (tests, standardized interview questions, etc.)

- Post-it Notes made during the selection process
- Calendars
- Telephone Logs (to document attempts to contact or interview dates)
- Invitations to Self-Identify as an individual with a disability or protected veteran
- Reference Checks
- Job Offer Letters
- Transfers and Reassignments
- Documentation of Background Checks
- Documentation of Physical Exams
- Drug Screen Results
- Written Policies
- Post Offer Process
- Disability and Veteran Self-Identification Information for Applicants and Employees
- Documentation for Establishing VEVRAA Hiring Benchmark
- Affirmative Action Goal Progress

Contractors must keep the self-identification records confidential. 41 CFR §§ 60-300.42(e), -741.42(e). Information related to disability status must also be maintained in a separate data analysis file. 41 CFR §§ 60-300.42(d), -741.42(e); see 41 CFR §§ 60-300.23(d), -741.23(d).

Promotions

- Applications/Expression of Interest in the new position
- Promotion Logs with race, ethnicity and sex data
- Training, including Management and Leadership Development and Leadership
- Transfers and Reassignments Providing Promotion Opportunity
- Selections for Apprenticeship with race, ethnicity and sex data
- Resumes
- Seniority Roster
- Job Bidding List
- Performance Appraisals
- Training Assessments
- Commendation Memos
- Written Policies

Terminations

- Resignation Letters
- Termination Letters
- Termination Logs with race, ethnicity and sex data
- Disciplinary Memos
- Performance Appraisals
- Performance Action Plans/Performance Improvement Plans
- Documentation of Reductions in Force, including criteria used
- Documentation of Layoffs, including criteria used
- Documentation of Facility Closings
- Written Policies

Compensation

- Performance Appraisals
- Change-of-Status Forms
- Commendation Memos
- Merit Increase Documentation
- Performance Bonus Documentation
- Documentation on Commissions
- Internal Compensation Analyses
- Market Research Documentation
- Offer Letters and Starting Salary
- Performance Bonus Documentation/Calculations
- Goals, Targets and Performance Expectations
- Other Incentive Compensation Information
- Reward Strategies
- Benefit Information
- Overtime Calculations
- Stock Administration
- Productivity Records (if piece rate or other productivity measure is used in compensation)
- Written Policies

Other

- Affirmative Action Program(s)
- Impact Ratio Analyses
- Collective Bargaining Agreements
- Employee Handbooks
- Organizational Chart(s)
- Information on Workflows (approvals for salary changes, promotions, etc.)
- Records on Demotions with race, ethnicity and sex data
- Records on Leave/Leave Management
- Records on Reasonable Accommodation Requests
- Mergers/Acquisitions, including dates, employees affected, etc.
- Internal Investigations of Complaints, including process for filing and resolution of internal complaints
- Discipline Records
- Employee Contact Information
- Separation Records
- Succession Planning/Career Planning Records
- Analytics Maintained in Human Resource Information Systems

Appendix M: Recording Demographic Data

While OFCCP does not mandate a specific time in the selection process when pre-offer demographic data must be requested, contractors must remember these general guidelines:

- Solicitation of demographic information should be made as early in the application process as possible. Contractors should not delay the solicitation so long (i.e. after assessing basic qualifications or at the interview stage) that it is no longer feasible to effectively solicit the information.
- Contractors are required to solicit demographic information from all individuals who meet the definition of an Internet applicant or traditional applicant.
- Once a contractor determines when to offer the invitation to provide demographic data, all Internet and traditional applicants must be given the same opportunity.
- Contractors may harmonize the solicitation of demographic data with the pre-offer invitation to self-identify as an individual with a disability and the invitation to self-identify as a protected veteran.

Only contractors that employ 50 or more workers and have a contract of \$50,000 or more are required to invite applicants to self-identify as individuals with disabilities. Additionally, contractors that employ 50 or more workers and have a contract of \$150,000 or more are required to invite applicants to self-identify as protected veterans.

Note, federally-assisted construction contractors are not required to offer applicants either of these invitations.

Contractors must preserve all demographic data, including demographic data gathered from social and professional networking websites. Additionally, demographic data related to disability and veteran status is confidential and must be maintained in a file separate from medical and other personnel files.

Appendix N: Recordkeeping for Internet Applicants

Who is an applicant?

Internet Applicant

- Submits an expression of interest, such as a job application, resume, or completes screening questions using the internet or any electronic technologies such as fax, email, kiosk or mobile app;
- Is considered for employment by the contractor for a particular position;
- Meets the basic job qualifications based on their application or resume, and
- Has not withdrawn from consideration before receiving an offer of employment.

Traditional Applicant*

- Expresses an interest in a job in writing, or in some limited instances orally; and
- Has not withdrawn from consideration before receiving an offer of employment.

What applicant records to keep?

Internet Applicant

- All expressions of interest that were considered.
- A copy of the basic qualifications for each position.
- Copies of job advertisements or postings for each position.
- Copies of applicant screening questions, interview questions, interview notes, tests, test results, and all other screening tools used to select applicants from each applicant pool.
- Documents resulting from searches of external web sites (*e.g.*, LinkedIn.com, etc.).
- Demographic data.

Traditional Applicant

- All expressions of interest.
- A copy of the qualifications for each position.
- Copies of job advertisements or postings for each position.
- Copies of applicant screening questions, interview questions, interview notes, tests, test results, and all other screening tools used to select applicants from each applicant pool.
- Demographic data.

How long to keep applicant records?

Internet Applicant

Records must be preserved for two years from the time the record was made or the personnel action was taken (whichever is later).

Exception: One year if the contractor has fewer than 150 employees or less than \$150,000 in a federal contract or subcontract. Traditional Applicant

* Non-electronic or non-internet applicant

Traditional Applicant

Records must be preserved for two years from the time the record was made or the personnel action was taken (whichever is later).

Exception: One year if the contractor has fewer than 150 employees or less than \$150,000 in a federal contract or subcontract.

What are some of the key terms and definitions I should know?***Expression of Interest in Employment***

An applicant expresses interest by taking an affirmative step to obtain a job or a position. An applicant typically expresses interest by sending a resume, filling out an application online, posting a resume on an external resume database, or completing pre-screening questions in a contractor kiosk or online database.

Considered for Employment

A federal contractor “considers” an applicant for a job or position by reviewing the application, resume or profile for substantive information, and assessing that information in light of the qualifications associated with the position.

Basic Qualifications

These are the qualifications the applicant must possess. They are the skills, experience, and attributes the contractor wants to find in the candidate hired for the position. The basic qualifications for the position or job must be in writing, objective, noncomparative, and job related. A contractor must include the basic qualifications in the job listing or advertisement. However, if the contractor does not list or advertise the job, the basic qualifications must be predetermined and reduced to writing or otherwise documented.

Demographic Data

This is information about the person’s race, sex, disability, and veteran status. Voluntary self-identification is the preferred method for collecting demographic data. In situations where the person does not self-identify, observer information may be used. However, if a contractor is unsure, the contractor should not guess.

Appendix O: How to Conduct Adverse Action Impact Analysis

Contractors with 100 or more employees must maintain and have available for each job records and other information showing the impact of the total selection process by identifiable race, sex and ethnic group. 41 CFR 60-3.4B and 3.15A(2)(a). “Total selection process” means the combined effect of all selection procedures leading to the final employment decision. At least annually, contractors with 100 or more employees are required to analyze these data to determine whether the total selection process for each job is having adverse impact. 41 CFR 60-3.15A(2). The adverse impact determinations must be conducted by gender and for each race or ethnic group (*e.g.*, Black, Hispanic, Asian/Pacific Islander, and American Indian/Alaskan Native) that constitutes 2 percent or more of the labor force in the relevant labor area or 2 percent or more of the applicable workforce. If the total selection process has an adverse impact, the impact of the individual components of the selection process also should be analyzed. 41 CFR 60-3.4C and 3.15A(2)(a).

“Adverse impact” is defined in the Uniform Guidelines as “a substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a race, gender, or ethnic group.” 41 CFR 60-3.16B. Generally, to determine whether the differences in selection rates are sufficiently substantial to be regarded as evidence of adverse impact, the contractor should apply what is commonly referred to as the “4/5ths rule” or the “80 percent rule” of the Uniform Guidelines. Under this rule, a selection rate for any race, sex, or ethnic group that is less than 4/5ths or 80 percent of the selection rate for the group with the highest selection rate is generally regarded as evidence of adverse impact. The 80 percent rule is a general rule, and is not dispositive in all situations. The Uniform Guidelines recognize, for example, that sample size and other factors may affect the reliability of the 80 percent rule as a measure of adverse impact.

The 80 percent rule may not be accurate in detecting adverse impact where very large numbers of selections are made. Where the number of selections is very large, relatively small differences in selection rates may nevertheless constitute adverse impact if they are both statistically and practically significant. 41 CFR 60-3.4D. For that reason, where the sample size is very large, tests of practical and statistical significance should be used to assess whether the selection procedure results in adverse impact.

Further, the 80 percent rule may not be a reliable indicator of adverse impact where the number of persons selected and difference in selection rates is very small. For example, if a contractor selected three males and one female from an applicant pool of 20 males and 10 females, the 80 percent rule would indicate adverse impact. The selection rate for women is 10 percent and the rate for men, 15 percent; 10/15 or 66 2/3 percent is less than 80 percent. Yet, the number of selections is too small to warrant a determination of adverse impact in these circumstances. Where the 80 percent rule indicates adverse impact, but the analysis is based on a sample too small to be reliable, evidence of the impact of the procedure over a longer period of time, or evidence concerning the impact of the procedure when used in the same manner elsewhere may be considered when determining adverse impact. 41 CFR 60-3.4D.

A four-step process is used to determine adverse impact:

1. Calculate the rate of selection for each group (divide the number of persons selected from a group by the number of applicants from that group).
2. Observe which group has the highest selection rate.
3. Calculate the impact ratios by comparing the selection rate for each group with that of the highest group (divide the selection rate for a group by selection rate for the highest group).
4. Observe whether the selection rate for any group is substantially less (*i.e.*, usually less than 4/5ths or 80 percent) than the selection rate for the highest group. If it is, adverse impact is indicated in most circumstances.

For example:

Applicants	Hires	Selection Rate
10 American Indians	2	2/10 or 20%
50 Blacks	20	20/50 or 40%
60 Hispanics	30	30/60 or 50%
80 Whites	48	48/80 or 60%

Comparisons of the selection rate for each group with that of the highest group (Whites) reveal the following impact ratios: American Indians 20/60 or 33%; Blacks 40/60 or 66.6%; and Hispanics 50/60 or 83%. Applying the 80 percent rule, on the basis of the above information, adverse impact is indicated for American Indians and Blacks but not for Hispanics.

If a selection procedure results in adverse impact, the contractor is required to eliminate it or justify its continued use. The contractor can justify using a selection procedure that has adverse impact by showing that the procedure has been validated according to the technical requirements of the Uniform Guidelines. “Validation” is the demonstration of job-relatedness by showing the relationship between the selection procedure and job performance. “Validation in accordance with the Guidelines” means a demonstration that a validity study meeting the standards of the Uniform Guidelines has been conducted and has produced evidence sufficient to warrant the use of the procedure for the purpose intended. 41 CFR 60-3.16X.

Even when a selection procedure with adverse impact has been validated, the contractor is obligated to investigate and consider suitable alternative selection procedures, and suitable alternative methods to using the selection procedure which have as little adverse impact as possible. 41 CFR 60-3.3B. Further, the contractor is required to use the procedure having less impact if it is “substantially equally valid.” 41 CFR 60-3.3B.

There also are circumstances when a contractor may justify using a selection procedure with adverse impact by showing that it is required by “business necessity” (*i.e.*, the contractor must show that the selection procedure is job-related and necessary to the safe and efficient operation of its business).

In sum, the Uniform Guidelines recommend the following actions when adverse impact occurs:

- Modify the assessment instrument or procedure causing the adverse impact.
- Exclude the component procedure causing adverse impact from your selection process.
- Use an alternative procedure that causes little or no adverse impact, assuming that the alternative procedure is substantially equally valid.
- Use the selection procedure that has adverse impact only if the procedure is job-related and valid for predicting successful job performance, and there is no equally effective procedure available that has less adverse impact.

Appendix P: Favored Group Minimum Size Criteria

This appendix is in response to a request for a description of the methods used to conduct adverse impact analyses of selection procedures where there are small numbers of particular racial/ethnic categories.

Minimum size criteria in OFCCP adverse impact analyses

Historically, OFCCP conducted adverse impact analysis for race/ethnicity by minority (i.e., all non-White races combined) candidates against non-minority (i.e., White) candidates. This two-group approach to race/ethnicity analysis, while simplistic, had one statistical advantage: it used information from the entire applicant pool in the calculation of expected frequencies. Table 1 provides an example of a classic two-group approach to impact ratio analysis by race.

To be generally applicable to all employment situations (e.g., hiring, promotion, termination, etc.), this appendix refers to “candidates” and “selections” as opposed to “applicants” and “hires.”

Table 1. Example classic two-group impact ratio analysis for race.

Group	Candidates	Selections	Selection Rate	Impact Ratio	Shortfall
Minority	500	25	5%	.33	25
Non-minority	500	75	15%	Favored Group	
Total	1,000	100	10%		

In Table 1, we can see that non-minority, or White, is the favored group, as it has the highest selection rate. The impact ratio for the minority group is calculated by dividing the minority selection rate (5%) by the non-minority selection rate (15%). The expected number of minority selections is calculated by multiplying the number of minority candidates (500) by the selection rate of the total candidate pool (10%). The shortfall for the minority group is calculated by subtracting the actual minority selections (25) from the expected number of minority selections (50). The minority impact ratio (.33) falls below the four-fifths rule for adverse impact enshrined in the Uniform Guidelines on Employee Selection Procedures (UGESP). 41 CFR 60-3.4D (“A selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.”). The minority shortfall of 25 indicates that 25 fewer minority candidates were selected than would have been expected in a race-neutral selection process.

The mathematics are straightforward in the example above, but they become more difficult when we expand our race analysis to look at more than two races in the candidate pool. Table 2 provides an example of a selection situation involving three race groups.

Table 2. Example multiple-race scenario.

Group	Group	Group	Group
Race 1	500	25	5.0%
Race 2	496	74	14.9%
Race 3	4	1	25.0%
Total	1,000	100	10.0%

From Table 2, note that Race 3 has the highest selection rate. Therefore, Race 3 will be used as the favored group in calculating impact ratios and shortfalls for Race 1 and Race 2. The results of these analyses are in Tables 3a and 3b.

Table 3a. Example classic two-group impact ratio analysis for race.

Group	Candidates	Selections	Selection Rate	Impact Ratio	Shortfall
Race 1	500	25	5.0%	.20	0.8
Race 3	4	1	25.0%	Favored Group	
Total	504	26	5.2%		

Table 3b. Example classic two-group impact ratio analysis for race.

Group	Candidates	Selections	Selection Rate	Impact Ratio	Shortfall
Race 2	496	74	14.9%	.60	0.4
Race 3	4	1	25.0%	Favored Group	
Total	500	75	15.0%		

When Race 3 is used as the favored group in adverse impact analysis, note that both Race 1 and Race 2 fall below the UGESP 80% threshold. The shortfall for Race 1 is 0.8 selections and the shortfall for Race 2 is 0.4 selections, meaning that less than one fewer member of Race 1 or Race 2 were selected than would have been expected in a race-neutral selection process.

It should be apparent that Tables 3a and 3b present contradictory information about the presence of selection disparity in this candidate pool. First, the impact ratio for Race 2 is below the four-fifths threshold, indicating potential discrimination in selection. However, note that the selection rate for Race 2 (14.9%; Table 3b) is above the overall selection rate of the total pool (10.0%; Table 2). How can Race 2 be identified as victims of discrimination when they are selected at a rate nearly 50% greater than what would be expected in the total pool?

Second, despite the fact that the selection rate for Race 1 (5.0%) is well below that of Race 3 (25.0%) and produces an impact ratio well below 80%, the shortfall for Race 1 is effectively zero (see Table 3a). However, Table 2 shows that Race 1 comprises half the total candidate pool, but it is selected at half the rate of the total candidate pool. How can there be zero shortfalls in such a large and obviously disfavored group?

In both instances, the confusion arises partly because the impact ratio and shortfall calculations in Tables 3a and 3b do not take the entire candidate pool into account; only the two groups in the calculation are accounted for. In addition, the favored group (Race 3) is so small relative to the other race groups that it cannot produce valid numbers of expected selections in either impact ratio analysis. As a result, failure to consider the entire pool in the impact ratio analysis skews the expected hire rate too high (15.0%) for the Race 2 impact ratio and too low (5.2%) for the Race 1 shortfall.

Reliance on a small favored group to anchor adverse impact analyses may be problematic in other ways. From Table 2, Race 3 has only 4 total candidates and only one selection. Often in the course of investigations, OFCCP may find that candidates need to be removed from the analysis for various reasons. For example, consider a situation in which the lone Race 3 selection is ultimately determined to have been a candidate outside of OFCCP's audit review period. Accordingly, OFCCP removes this candidate from its adverse impact analyses. The results are in Table 4. For brevity, all races and their associated impact ratios and shortfalls are presented together.

Table 4. Example multiple-race scenario.

Group	Candidates	Selections	Selection Rate	Impact Ratio	Shortfall
Race 1	500	25	5.0%	.33	24.0
Race 2	496	74	14.9%	Favored Group	
Race 3	3	0	0.0%	0.0	0.3
Total	999	99	9.9%		

As a result of removing the lone Race 3 selection, Race 3's selection rate has changed from 25.0% (the favored group) to 0.0% (a disfavored group). Meanwhile, the Race 1 shortfall has jumped from less than one to 24. The dramatic fluctuation of findings in this example manifests how the statistical calculations can appear to be very unstable or prone to error when applied to small groups. This is because the impact ratio analyses in Tables 3a and 3b were initially based on such a small **favored** group.

The above scenario in Table 4 hints at another issue: practical significance, or whether the observed disparity reflects meaningful harm to the disfavored group. Even assuming the counts of candidates and selections in Table 2 are final, it is clear that any disparity demonstrated using Race 3 as the favored group can be considered practically insignificant under what is often referred to as the UGESP "flip-flop" rule. Pursuing indicators in situations like the one outlined above is inefficient and uncertain, wasting the time and resources of OFCCP and contractors.

Table 4 reflects the true selection issue at this example contractor; namely, that 25 (10% of 500 candidates, minus 25 actual selections; see Table 1) fewer Race 1 candidates were selected than would have been expected in a race-neutral selection process. That this is true whether or not Race 3 was used as the favored group is yet another problem that can easily arise with small selection groups.

For more information on the "flip-flop" rule, see Practical significance in EEO analysis. OFCCP Frequently Asked Questions. <https://www.dol.gov/ofccp/regs/compliance/faqs/>

What the *Uniform Guidelines on Employee Selection Procedures* says about minimum size criteria

According to 41 CFR 60-3.15A(2), “[a]dverse impact determinations should be made at least annually for [each race, sex, and ethnic group listed in 41 CFR 60-3.4B] which constitutes at least 2 percent of the labor force in the relevant labor area or 2 percent of the applicable workforce.” This point is reiterated in Question 16 of the UGESP Q&A, which further explains that “[f]or hiring, such determination should also be made for groups which constitute more than 2% of the applicants; and for promotions, determinations should also be made for those groups which constitute at least 2% of the user’s workforce.”

OFCCP practice for setting minimum size criteria

Based on the aforementioned guidance in UGESP and its associated Q&A, OFCCP has put in place a practice that the group chosen as the favored group at desk audit must comprise at least 2% of the candidate pool.

However, simply relying on the 2% rule alone may not result in a favored group large enough for OFCCP’s findings to withstand scrutiny when candidate pools are relatively small. For example, in a candidate pool of 50 people, the 2% rule allows a favored group of only 1 candidate in size. This situation is clearly unacceptable for analysis purposes. Hence, the 2% rule needs to be supplemented with a numerical minimum size requirement to ensure OFCCP is not relying on a favored group too small to conduct its desk audit, which includes impact ratio analyses and statistical tests. Since asymptotic statistical significance tests of frequency counts (e.g., OFCCP’s Standard Deviation Z-test) generally require expected counts of at least 5 to be considered valid, OFCCP chose 5 as the supplemental minimum size requirement for designating a favored group in adverse impact analysis. The compound threshold of 2% and 5 has performed well in several years of use in OFCCP audits.

Note that exact statistical significance tests (e.g., Fisher’s exact test) may be an alternative to asymptotic tests in situations with very small candidate pools. A supplemental minimum size requirement would not be needed with an exact test. However, the use of an exact test does not obviate concerns over practical significance, statistical power, or the stability of the results. OFCCP may employ exact tests if the facts of the case warrant (see below).

A different issue may be encountered in very large candidate pools. In the context of hiring analyses, OFCCP routinely reviews candidate pools consisting of thousands of applicants. In those cases, an initially-identified favored group may meet minimum size criteria, but may still be so small relative to other race groups that another, even larger group may be chosen by OFCCP as the favored group. See Table 5 on the following page.

Are contractors obligated to use the minimum size criteria described in this appendix in their own adverse impact analyses?

No. This appendix is presented to clarify how OFCCP may approach adverse impact analysis based on race/ethnicity at the start of a desk audit and the reasoning behind the approach. No new requirements are imposed on contractors by the existence of this appendix.

Table 5. Example multiple-race impact ratio analysis in a very large applicant pool (initial).

Group	Candidates	Selections	Selection Rate	Impact Ratio	Shortfall
Race 1	5,000	250	5.0%	.33	19.2
Race 2	4,760	710	14.9%	.99	0.2
Race 3	30	0	0.0%	0.0	3.9
Race 4	200	30	15.0%	Favored	
Total	9,990	990	10.0%		

Note that according to the minimum size criteria above, the initially-identified favored group is Race 4. However, Race 4 is so small relative to Race 1 that the Race 1 shortfall is calculated to be only 19.2. Based on the earlier discussion of Tables 3a and 3b, this is clearly an erroneous result. Race 4, despite being the highest-selected group and meeting minimum size criteria, is simply too small to produce valid expected counts of selections in Race 1. The analysis should therefore be run against a different favored group. Table 6 below shows the analysis using Race 2 instead of Race 4 as the favored group.

Table 6. Example multiple-race impact ratio analysis in a very large applicant pool (revised).

Group	Candidates	Selections	Selection Rate	Impact Ratio	Shortfall
Race 1	5,000	250	5.0%	.34	241.8
Race 2	4,760	710	14.9%	Favored	
Race 3	30	0	0.0%	0.0	4.4
Race 4	200	30	15.0%	1.01	(0.2)
Total	9,990	990	10.0%		

Moving the favored race from Race 4 to Race 2 produces a more valid Race 1 shortfall of 241.8. A fundamental principle guiding the decision to select a different favored group should be how closely the joint selection rate of the two groups in the adverse impact calculation mirrors the selection rate of the candidate pool as a whole.

OFCCP's use of the aforementioned minimum size criteria on the favored group is a tool to direct reviews in the early stages toward cases more likely to produce statistically and practically significant results, and is not a general prescription for all situations. OFCCP takes standards of statistical science into account while conducting an analysis that comports with its regulations and other applicable legal standards. In addition, OFCCP prefers, absent other evidence, not to allocate scarce Agency resources to cases that have potentially misleading, unstable, or practically insignificant results.

That being said, OFCCP is empowered to conduct adverse impact analysis on smaller groups if the facts of the case warrant such analysis. For example, if race groups are all small, but relatively balanced in size, adverse impact analysis on those small groups would be less likely to produce misleading results. As noted above, exact tests are available to analyze the data in those situations. In addition, comparisons of incumbency to availability do not involve a favored group, and thus are a form of adverse impact analysis that are immune to the problems discussed above. Lastly, anecdotal evidence may reveal hidden issues that require a revision of the statistical analysis. Therefore, OFCCP cannot say it is never appropriate to include groups of fewer than five members in adverse impact analyses.

Analyzing candidates identified as “Two or More” races in an adverse impact analysis

Related to the question of small groups is the treatment of candidates identifying as “Two or More” races/ethnicities, which tend to comprise a small proportion of candidate pools. OFCCP accepts use of the “Two or More” racial/ethnic category since it is found on the Employer Information Report EEO-1 (Standard Form 100), which is consistent with the racial and ethnic classifications in 41 CFR 60-3.4B. Given the five race categories mentioned in 41 CFR 60-3.B (American Indian [including Alaskan Native], Asian [including Pacific Islander], Black, Hispanic, and White), there are 26 possible multiple-race combinations that fall under “Two or More,” any or all of which could be present in the same candidate pool. Some of these individuals, if OFCCP were provided full race/ethnicity information on “Two or More,” might identify with both the favored and disfavored groups, making inclusion of them as a separate group in an adverse impact analysis even more problematic.

Accordingly, OFCCP generally would not consider “Two or More” as either a favored or disfavored group for adverse impact analysis in its investigations, unless the agency’s investigation reveals specific facts such that an analysis can be undertaken that avoids the analytical problems discussed previously. However, data related to individuals classified as “Two or More” may, at the Agency’s discretion, be included in an adverse impact analysis to ensure that the overall selection rate in the adverse impact calculation reflects (to the greatest degree possible) the actual overall selection rate of the candidate pool.

Appendix Q: OFCCP Compensation Reviews

Title VII Analytic Proof Standards for Compensation Reviews

OFCCP enforces the nondiscrimination provisions of Executive Order 11246, including the ban on compensation discrimination, following Title VII principles. Like Executive Order 11246, Title VII prohibits employers from discriminating against individuals with respect to their compensation based on race, color, religion, sex, and national origin. Although courts recognize that systemic compensation discrimination claims can be based on a disparate impact theory of discrimination, the vast majority of systemic compensation discrimination claims proceed under Title VII's disparate treatment theory, which requires a showing of intentional discrimination.

One way of showing discriminatory intent is through the use of statistical evidence. The Supreme Court recognized the important role of statistical analyses in discrimination cases in *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324 (1977). In *Teamsters*, the United States presented statistical evidence to support its claim of race discrimination in pay and promotion practices. *Id.* at 339. The Court held that “our cases make it unmistakably clear that ‘[s]tatistical analyses have served and will continue to serve an important role’ in cases in which the existence of discrimination is a disputed issue.” *Id.* (citation omitted). Statistics of certain proportions are sufficient to establish the inference of intentional discrimination. See *id.* at 340; *Hazelwood Sch. Distr. v. U.S.*, 433 U.S. 299, 308-09 n.14 (1977).

Traditionally, plaintiffs present regression analyses as evidence of intentional discrimination in class action pattern-or-practice disparate treatment cases. (Plaintiffs also rely upon regression analyses to establish community between the members of the class as required by Title VII.) Regression analysis is a statistical technique that isolates interrelationships among variables through a regression equation. See RAMONA L. PAETZOLD & STEVEN L. WILLBORN, THE STATISTICS OF DISCRIMINATION: USING STATISTICAL EVIDENCE IN DISCRIMINATION CASES § 6:1 at 2 (October 2017 Update). Multiple regression analysis has long been accepted as a statistical technique for determining the presence of, and measuring the extent of, discrimination in compensation on the basis of protected class status. *Id.* Regression analysis is useful in shedding light on the possible systemic underpayment of one protected group relative to another. *Id.* at 1. It allows the pooling of many individuals into one group while still accounting for all major factors relevant to determining compensation level. *Id.* “In essence, the regression measures the impact of each potential explanatory variable upon the dependent variable by holding all other explanatory variables constant. The analysis yields figures demonstrating how much of an observed disparity in salaries can be traced to [a protected basis], as opposed to any of the other potential explanatory variables.” *Segar v. Smith*, 738 F.2d 1249, 1261 (D.C. Cir. 1984). See also *Ottaviani v. State University of New York at New Paltz*, 875 F.2d 365, 367 (2d Cir. 1989).

Although OFCCP will consider all the variables that a contractor suggests as important determinates of pay, the Agency's goal is to model the major determinates of pay. Since there is some statistical virtue in “parsimonious” models, OFCCP attempts to create strong explanatory models with as few variables as possible. This approach has precedence in Title VII case law. After emphasizing the value of statistical evidence as *prima facie* proof in *Teamsters*, in 1986, the Supreme Court upheld the use of regression analyses in compensation discrimination cases, even when such regressions do not include every variable the defendant claims is relevant. *Bazemore*

v. Friday, 478 U.S. 385 (1986). In *Bazemore*, multiple black employees alleged racial discrimination in the employer's compensation practices. *Id.* at 394. To support this claim, the petitioners relied heavily on multiple regression analyses to demonstrate that black employees were paid less than similarly-situated white employees. *Id.* at 398. Although the regressions controlled for the variables that were identified by an official employed by the defendant as most determinative of salary (education, tenure, and job title), in addition to race, the defendant offered nine additional variables that it claimed needed to be included for the regression to be valid. *Id.* at 404 n.15. The defendant argued that the plaintiffs' failure to include these variables resulted in a false showing of discrimination. *Id.* at 399-400. The Supreme Court recognized that, even though omitted variables can make regression analyses less probative, this consideration should not usually be made at the admissibility stage. *Id.* at 400. In fact, the Court noted that, because the burden of proof is preponderance of the evidence, regression analyses that do not include "all measurable variables" can "serve to prove a plaintiff's case." *Id.* As a result, the Court remanded the case for the lower court to consider the statistical evidence in light of the entire record. *Id.* at 386-87; *see infra* at pp. 8-11.

The Supreme Court's holding in *Bazemore* that a plaintiff's regression analysis need not include all variables that the employer claims are relevant to be admissible is particularly relevant to OFCCP reviews due to the multitude of factors that might influence compensation. That said, OFCCP has committed to considering a contractor's major pay-influencing variables when running regression analyses so that the agency's findings are resilient to the contractor's rebuttal arguments. In its evaluations, OFCCP engages in a thorough investigation of an employer's personnel structure and pay system(s) to ensure that the agency's regression analyses account for the major nondiscriminatory explanations (or variables) of salary disparities. OFCCP's objective is not to predict accurately every aspect of salary, but rather to isolate variables that might legitimately influence pay outcomes separate and apart from gender, race, and other variables related to protected classes. However, the identification of major variables and the merit of their inclusion is highly case-specific. *Coward*, 140 F.3d at 274-75.

Aggregating Multiple Years of Data

As a general rule, courts have approved analyses that aggregate personnel data over multiple years, often finding them more probative than analyses that consider calendar years separately, but this depends on the specific facts of the case. Where liability is premised on actions taken within a period spanning several years, there is little reason to fragment the data even by year. "Aggregating the data as the plaintiff did was a much more reasonable approach, since liability under Title VII depends on whether the EEOC demonstrated a 'system wide pattern or practice' of disparate treatment, rather than 'the occurrence of isolated or 'accidental' or sporadic discriminatory acts. It had to establish ... [that] discrimination was the company's standard operating procedure—the regular rather than the unusual practice.'" *Capaci v. Katz & Besthoff, Inc.*, 711 F.2d 647, 656 (5th Cir. 1983), *cert. denied*, 466 U.S. 927 (1984), quoting *Teamsters*, 431 U.S. at 336; *see also Lilly v. Harris-Teeter Supermarket*, 720 F.2d 326, 336 n.17 (4th Cir. 1983) ("If possible, it is highly preferable to examine the statistical data for the time period in combined form, rather than year by year. Combined data is more likely to demonstrate the 'pattern or practice' of defendant's policies, whether discriminatory or not."); *Shinault v. City of Chicago*, 1987 WL 16902, at *5 (N.D. Ill. 1987) (statistical evidence envisioned in a *Teamsters* prima facie case aggregates for scrutiny of large numbers of employment decisions and the cumulative effects of many employment decisions);

Shafer v. Commander, Army and Air Force Exchange Service, 667 F. Supp. 414, 427-28 (N.D. Tex. 1985) (aggregating promotion data over a 10-year period was a much more reasonable approach, since liability under Title VII depends on whether the EEOC demonstrated a system-wide pattern or practice of disparate treatment, rather than “the occurrence of isolated or accidental or sporadic discriminatory acts.” (citing *Teamsters*, 431 U.S. at 336)).

In the hiring context, courts consistently recognize that aggregation across years is appropriate where employment practices or policies have remained unchanged. In *Eldredge v. Carpenters 46 Northern California Counties Joint Apprenticeship and Training Committee*, 833 F.2d 1334, 1339 n.7 (9th Cir. 1987), *cert. denied*, 487 U.S. 1210 (1988), the plaintiff aggregated nine years of data relating to the admission of women into an apprenticeship program. Analyzed year by year, the data showed that women’s contract rate fluctuated between 16.09% and 64.03% of the men’s rate. Despite the wide fluctuations in annual rates, the court noted that the “aggregated data presents a more complete and reliable picture of the effects of the JATC’s admission practices.” *Id.* The *Eldredge* court held that, where “policies have remained unchanged over a period of time and there have been no substantial changes in the conditions determining their application, it would be unreasonable to require a plaintiff to break his or her data into year by year subgroups.” *Id.*, quoting DAVID C. BALDUS & JAMES W.L. COLE, STATISTICAL PROOF OF DISCRIMINATION § 7.1 (1986 Supp.). See also *Vulcan Pioneers, Inc. v. New Jersey Dept. of Civil Service*, 625 F. Supp. 527, 534-35 (D.N.J. 1985) (court accepted aggregation of results of different tests because of similarities among the tests; all resulted from the same job analysis, were derived from the same textbooks, and were utilized by the same employer), *aff’d on other grounds*, 832 F.2d 811 (3d Cir. 1987).

Notably, other courts that have considered pooled, or aggregated, analyses recognized that a factual determination needs to be made as to whether such groupings are appropriate. *Rendon v. AT & T Technologies*, 883 F.2d 388, 397 (5th Cir. 1989) (the pooling issue should be decided on the facts of the particular case); *Coates v. Johnson & Johnson*, 756 F.2d 524, 541 (7th Cir. 1985) (holding that the district court’s finding that it was inappropriate to pool statistical data regarding discharge rates over seven years was not clearly erroneous, partly because the year-by-year data produced samples that were “not so small as to preclude a finding of statistical significance”); *Shinault*, 1987 WL 16902, at *5 (if the racial bias resided with the Board of Education in the selection of candidates, it would be appropriate to analyze data at the aggregate, system-wide level; however, if the racial bias resided with the principal, then a stratified approach would be more appropriate).

Akin to selection analyses, annual compensation data can also be aggregated to study systemic influences. OFCCP enforcement matters and Title VII liability analyses may aggregate multiple years of compensation data in appropriate circumstances. For example, in *Chen-Oster v. Goldman, Sachs & Co.*, 114 F. Supp. 3d 110 (S.D.N.Y. 2015), *magistrate’s recommended decision adopted in part*, 325 F.R.D. 55 (S.D.N.Y. 2018), plaintiff’s expert analyzed 11 years of data simultaneously. When OFCCP analyzes multiple years of data, it will control for the year of the pay observation to capture any time-dependent pay influences. However, OFCCP will consider any structural breaks or interruptions in the data caused by significant changes to a contractor’s compensation system, or other events such as mergers and acquisitions. In many instances, these changes can be isolated with control variables, but in others they may warrant separate analyses within different time periods. OFCCP will also use repeated measures adjustments to eliminate any undue influence of individuals appearing in multiple years of data.

Aggregating Similarly Situated Employees

There is no requirement under Title VII for a plaintiff to prove her claim of pay discrimination by comparing herself to someone who is performing equal work for greater pay – as the Equal Pay Act requires – or who is “similarly situated.” Violations of Title VII can be established even without the existence of such comparator evidence. *Lenzi v. Systemax, Inc.*, 944 F.3d 97, 110 (2d Cir. 2019). Otherwise, “if an employer used a transparently sex-biased system for wage determination, women holding jobs not equal to those held by men would be denied the right to prove that the system is a pretext for discrimination.” *Id.* (quoting *Washington Cty. v. Gunther*, 452 U.S. 161, 179 (1981)). “[A]ll Title VII requires a plaintiff to prove is that her employer ‘discriminate[d] against [her] with respect to [her] compensation...because of [her]...sex.’” *Id.* (citing 42 USC § 2000e-2(a)(1)). Here the court reminded that “a Title VII plaintiff alleging a discriminatory compensation practice need not establish that she performed equal work for unequal pay.” To impose such a standard “would mean that a woman who is discriminatorily underpaid could obtain no relief—no matter how egregious the discrimination might be—unless her employer also employed a man in an equal job in the same establishment, at a higher rate of pay.” The more telling aspect of the *Lenzi* ruling was that the plaintiff, who was the VP of Risk Management, was allowed to establish a prima facie case by showing that Systemax paid her under market value while “it paid nearly all of [her] male executive peers above market rate for their respective positions.” According to the Second Circuit: “These statistical differences permit an inference of discrimination.”

As stated in OFCCP Directive 2018-05 (Analysis of Contractor Compensation Practices During a Compliance, <https://www.dol.gov/agencies/ofccp/directives/2018-05>), OFCCP defines similarly-situated employees as those who would be expected to have similar pay based on: (a) job similarity (e.g., tasks performed, skills required, effort, responsibility, working conditions and complexity); and (b) other objective factors such as minimum qualifications or certifications. This guidance is nearly identical to the EEOC Compliance Manual (<https://www.eeoc.gov/laws/guidance/section-10-compensation-discrimination>). OFCCP therefore views groups of similarly situated employees, or SSEGs, and pay analysis groups (PAGs) as analogous concepts both related to an aggregation of comparable employees for the purposes of compensation equity analysis.

Whether aggregation of groups of employees is appropriate will depend on the facts of a given case. In systemic compensation discrimination cases, courts consider whether employees are subject to and affected by the same common company practices when determining whether groups of employees are similarly situated, and thus, appropriately aggregated. *Compare, e.g., McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 672 F.3d 482, 488-92 (7th Cir. 2012) (certifying a class of 700 current and former Black brokers throughout the country on the basis of a common issue, the company-wide “teaming” and “account distribution” policies that could affect their compensation), and *Chen-Oster*, 114 F. Supp. 3d at 116, 120-22 (finding that aggregating across business units was the proper regression analysis model), with, *e.g., Anderson v. Westinghouse Savannah River Co.*, 406 F.3d 248, 261-62 (4th Cir. 2005) (affirming the district court’s rejection of plaintiffs’ expert’s analysis based on EEO job groupings because a “single job group could contain 147 separate individual job titles and up to seven separate pay grades” and failed to facilitate comparison of similarly situated employees), and *Ram v. New Mexico Dep’t of Environment*, 2006 WL 4079623 (D. Mex. Dec. 15, 2006) (rejecting plaintiffs’ model for aggregating employees with different employee status, such as temporary and supervisory employees). For instance, in *Chen-Oster*, the court found that a regression analysis model that aggregated employees belonging to

different business units was appropriate based on the facts of the case. 114 F. Supp. 3d at 120-22.

The plaintiffs alleged gender-based discrimination in compensation and promotion. Their expert used multiple regression analysis to study Goldman Sachs' workforce and included factors such as the year, the division in which the employee worked, geographic office, education, prior related work experience, experience at Goldman Sachs, lateral or direct hiring status, and job group. *Id.* at 116. The defendants' expert claimed that aggregation was improper because it did not follow the structure of the company's business—specifically its business units. The court noted that “[t]his is a typical argument in many employment discrimination cases. ‘In equal employment cases involving an employer with a number of locations or subunits, defendants may argue that the data should be examined separately for each unit, while plaintiffs may pool the data into one or several large samples or focus on a few units in which statistical significance was observed.’” *Chen-Oster*, 325 F.R.D. at 120 (citing Joseph L. Gastwirth and Efstathia Bura, *Some Important Statistical Issues Courts Should Consider in Their Assessment of Statistical Analyses Submitted in Class Certification Motions: Implications for Dukes v. Wal-Mart*, 10 Law, Probability and Risk). The court concluded that “[the expert’s] decision to aggregate data . . . was reasonable both in light of the evidence that Goldman Sachs applies common performance measures that influence pay and promotion across business units and in light of the statistical pitfalls of disaggregation.” *Id.* at 121.

Ellis v. Costco Wholesale Corp., 285 F.R.D. 492 (N.D. Cal. 2012), is also instructive, as this decision discusses the validity of aggregating employees in a compensation discrimination case to evaluate the discriminatory effects of common, corporate policies. In this case, plaintiffs asserted that nationwide employee statistics were appropriate, whereas the defendant asserted that employees should not be aggregated above the regional level. *Ellis*, 285 F.R.D. at 523. The court held that “there is good reason to rely on nationwide statistics. Not only do the larger aggregate numbers allow for a robust analysis and yield more reliable and meaningful statistical results, [but also] Costco’s own promotion practices support a nationwide statistical analysis ... [here] Plaintiff’s statistical analysis conforms to the level of decision for the challenged practices[.]” *Id.* In *Ellis*, the court also relied upon descriptive statistics to bolster the position that nationwide aggregation was appropriate. The court noted that, even if data were examined strictly on a regional basis, the fact that seven out of eight regions show a raw gender disparity in promotions is telling. *Id.* at 497, 523. Accordingly, using the “raw” descriptive statistics, “the data support[ed] Plaintiff’s contention that gender disparities extend across all regions[.]” *Id.* at 523. *Ellis* provides a useful standard for determining the appropriateness

More on *Chen-Oster v. Goldman, Sachs & Co.*:

The court relied on the contractor’s composition of its current AAP job groups as a way to measure similarities in job function. The court held that since Goldman Sachs was required to classify its employees into AAP job groups precisely on the basis of both similarity of duties and responsibilities and opportunities for compensation and promotion, they could not now reject that classification system as an input in creating a model for calculating expected pay and promotion. *Chen-Oster*, 114 F. Supp. 3d at 119-20.

of aggregating certain employees. The court held that the plaintiffs successfully established “discrete companywide policies guided and supervised by a relatively small and coherent group of company executives. These policies and practices, set and enforced by upper management, provide the ‘glue’ the Supreme Court sought – but did not find – in [*Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)], sufficient to ‘say that the examination of all the class members’ claims for relief will produce a common answer to the crucial question *why was I disfavored.*’” *Id.* at 524 (emphasis in original).

The decision in *Jones v. National Council of Young Men’s Christian Ass’ns of the United States*, 2013 WL 7046374 (N.D. Ill. 2013), *report and recommendation adopted*, 34 F. Supp. 3d 896 (N.D. Ill. 2014), provides yet another example of a court’s adoption of the plaintiff’s use of aggregated statistics to establish the discriminatory effects of a company’s pay practices. In *Jones*, the plaintiff’s expert studied the statistical impact of the employer’s policies by analyzing all individuals subject to the employer’s policies at issue: Salary Administration Guidelines, a mandatory semi-annual performance evaluation process, and promotion/job assignment practices. *Id.* at *11. The employer argued that the pay studies improperly aggregated employees to compare the pay of the CEO to that of the lowest level clerk. *Id.* But, the court held that the expert’s “decision to include all African American employees was not cherry-picking, but rather the opposite, as he included all Y employees to which Plaintiffs argue that the alleged discriminatory policies of pay, performance evaluations, and promotions apply. This fact, along with the relatively small size of the [employer’s] workforce, is why [the expert’s] analyses measure the alleged disparities experienced by all African American employees.” *Id.* The fact that all of these employees were subjected to the same allegedly discriminatory pay practices warranted aggregating the employees. For purposes of evaluating the discriminatory impacts of these pay practices, the employees aggregated in the analyses were similarly situated.

Notably, there are circumstances under which OFCCP might use complete aggregation for the limited purpose of analyzing the scope of the alleged compensation discrimination. In *Velez v. Novartis Pharmaceuticals, Corp.*, 244 F.R.D. 243 (S.D.N.Y. 2007), the court accepted a regression analysis for class certification purposes that compared all employees with similar experience levels across job groups, regardless of job positions or titles. The employer argued that it was inappropriate to examine pay disparities across all job groups and the court agreed that the comparison was not of similarly situated employees, and thus not necessarily evidence of discrimination in pay. *Id.* However, the court found that the comparison was relevant to the question of whether women at Novartis actually suffered adverse impact as a result of bias in the allegedly subjective evaluation system. “If it is true that bias reduces a woman’s chances of promotion, then it is useful to identify the resulting pay disparity as an additional consequence of the subjective and biased evaluation system.” *Id.* at 260-61. As such, the court held that the possible widespread subjectivity in performance evaluations could affect women’s compensation. Thereafter, this class action was fully litigated and then settled in November 2010, after the plaintiffs prevailed on all accounts at trial. *See Velez v. Novartis Pharmaceuticals Corp.*, 2010 WL 4877852 (S.D.N.Y. Nov. 30, 2010). Collectively, these decisions demonstrate that aggregation is permissible, so long as there are reasonable justifications for aggregating certain employees and adequate controls available for regression analysis.

Appendix R: Invitation to Self-Identify – Section 503

Form CC-305

OMB Control Number 1250-0005

Page 1 of 1

Expires 05/31/2023

VOLUNTARY SELF IDENTIFICATION OF DISABILITY

Name: _____

Date: _____ Employee ID: _____
(if applicable)

Why are you being asked to complete this form?

We are a federal contractor or subcontractor required by law to provide equal employment opportunity to qualified people with disabilities. We are also required to measure our progress toward having at least 7% of our workforce be individuals with disabilities. To do this, we must ask applicants and employees if they have a disability or have ever had a disability. Because a person may become disabled at any time, we ask all of our employees to update their information at least every five years.

Identifying yourself as an individual with a disability is voluntary, and we hope that you will choose to do so. Your answer will be maintained confidentially and not be seen by selecting officials or anyone else involved in making personnel decisions. Completing the form will not negatively impact you in any way, regardless of whether you have self-identified in the past. For more information about this form or the equal employment obligations of federal contractors under Section 503 of the Rehabilitation Act, visit the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) website at www.dol.gov/ofccp.

How do you know if you have a disability?

You are considered to have a disability if you have a physical or mental impairment or medical condition that substantially limits a major life activity, or if you have a history or record of such an impairment or medical condition. Disabilities include, but are not limited to:

- Autism
- Autoimmune disorder, for example, lupus, fibromyalgia, rheumatoid arthritis, or HIV/AIDS
- Blind or low vision
- Cancer
- Cardiovascular or heart disease
- Celiac disease
- Cerebral palsy
- Deaf or hard of hearing
- Depression or anxiety
- Diabetes
- Epilepsy
- Gastrointestinal disorders, for example, Crohn's Disease, or irritable bowel syndrome
- Intellectual disability
- Missing limbs or partially missing limbs
- Nervous system condition for example, migraine headaches, Parkinson's disease, or Multiple sclerosis (MS)
- Psychiatric condition, for example, bipolar disorder, schizophrenia, PTSD, or major depression

Please check one of the boxes below

- ☐ Yes, I Have A Disability, Or Have A History/Record Of Having A Disability
- ☐ No, I Don't Have A Disability, Or A History/Record Of Having A Disability ☐ I Don't Wish To Answer

PUBLIC BURDEN STATEMENT: According to the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. This survey should take about 5 minutes to complete.

FOR EMPLOYER USE ONLY

Employers may modify this section of the form as needed for recordkeeping purposes. For example:

Job Title: _____ Date of Hire: _____

Appendix S: Invitation to Self-Identify – VEVRAA

Voluntary Self-Identification of “Protected” Veteran Status

Why are you being asked to complete this form?

This employer is a Government contractor subject to the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended by the Jobs for Veterans Act of 2002, 38 U.S.C. 4212 (VEVRAA). VEVRAA requires Government contractors to take affirmative action to employ and advance in employment protected veterans. To help us measure the effectiveness of our outreach and recruitment efforts of veterans, we are asking you to tell us if you are a veteran covered by VEVRAA. Completing this form is completely voluntary, but we hope you fill it out. Any answer you give will be kept private and will not be used against you in any way.

For more information about this form or the equal employment obligations of Federal contractors, visit the U.S. Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) website at www.dol.gov/ofccp.

How Do You Know if You Are a Veteran Protected by VEVRAA

Contrary to the name, VEVRAA does not just cover Vietnam Era veterans. It covers several categories of veterans from World War II, the Korean conflict, the Vietnam era, and the Persian Gulf War which is defined as occurring from August 2, 1990 to the present.

If you believe you belong to any of the categories of protected veterans please indicate by checking the appropriate box below. The categories are defined on the next page and explained further in an “Am I a Protected Veteran” infographic provided by OFCCP (<https://www.dol.gov/ofccp/posters/infographics/protectedvet.htm>).

- ☐ I IDENTIFY AS ONE OR MORE OF THE CLASSIFICATIONS OF PROTECTED VETERAN LISTED BELOW
- ☐ I AM NOT A PROTECTED VETERAN ☐ I DO NOT WISH TO ANSWER

Your Name: _____ Today’s Date: _____

What Categories of Veterans Are “Protected” by VEVRAA?

“Protected” veterans include the following categories: (1) disabled veterans; (2) recently separated veterans; (3) active duty wartime or campaign badge veterans; and (4) Armed Forces service medal veterans. These categories are defined below.

- 1) A “disabled veteran” is one of the following:
 - a veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or
 - a person who was discharged or released from active duty because of a service-connected disability.
- 2) A “recently separated veteran” means any veteran during the three-year period beginning on the date of such veteran’s discharge or release from active duty in the U.S. military, ground, naval, or air service.
- 3) An “active duty wartime or campaign badge veteran” means a veteran who served on active duty in the U.S. military, ground, naval or air service during a war, or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.
- 4) An “Armed forces service medal veteran” means a veteran who, while serving on active duty in the U.S. military, ground, naval or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985.

Appendix T: Notice of Employee Rights under the National Labor Relations Act

EXECUTIVE ORDER 13496: NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

Federal contractors and subcontractors are required to inform employees of their rights under the National Labor Relations Act (NLRA), the primary law governing relations between unions and employers in the private sector. See 29 CFR Part 471. The notice, prescribed in the Department of Labor's regulations, informs employees of Federal contractors and subcontractors of their rights under the NLRA to organize and bargain collectively with their employers and to engage in other protected concerted activity.

Additionally, the notice provides examples of illegal conduct by employers and unions, and it provides contact information to the National Labor Relations Board (www.nlrb.gov), the agency responsible for enforcing the NLRA. Federal contractors and subcontractors are required to post the prescribed employee notice conspicuously in plants and offices where employees covered by the NLRA perform contract-related activity, including all places where notices to employees are customarily posted both physically and electronically.

Federal Government contracting departments and agencies must include provisions requiring contractors to post the prescribed notice in every Government contract, except collective bargaining agreements entered into by a Federal agency, contracts for purchases under the Simplified Acquisition Threshold, and in those cases where the Secretary exempts a contracting department or agency pursuant to the Executive Order. Government contractors must also include provisions requiring posting of the prescribed notice in all subcontracts.

Enforcement responsibilities for the notice requirements are shared by two Department of Labor agencies. The Office of Federal Contract Compliance Programs (OFCCP) is responsible for investigation of complaints, compliance evaluations, and conciliation, and that agency will refer violations to the Office of Labor-Management Standards (OLMS) for enforcement. The sanctions, penalties, and remedies for noncompliance with the notice requirements include the suspension or cancellation of the contract and the debarring of Federal contractors from future Federal contracts.

The Department of Labor's regulations implement Executive Order (E.O.) 13496 signed by President Barack Obama on January 30, 2009 (74 FR 6107, February 4, 2009). E.O. 13496 advances the Administration's goal of promoting economy and efficiency of Federal government procurement by ensuring that workers employed in the private sector and engaged in activity related to the performance of Federal government contracts are informed of their rights to form, join, or assist a union and bargain collectively with their employer. Knowledge of such basic statutory rights promotes stable labor-management relations, thus reducing costs to the Federal government.

Appendix U: Sample Policy Statement for Employment of Spouses and Other Individuals Associated with Protected Veterans

It is unlawful for [Federal Contractor, Inc.] to discriminate because of a person's relationship or association with a protected veteran. This includes spouses and other family members. [Federal Contractor, Inc.] will safeguard the fair and equitable treatment of protected veteran spouses and family members with regard to all employment actions and prohibit harassment of applicants and employees because of their relationship or association with a protected veteran.



OFFICE OF FEDERAL CONTRACT
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U.S. DEPARTMENT OF LABOR

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