

Active Case Enforcement (ACE)
Frequently Asked Questions

1. What is ACE?

Active Case Enforcement (ACE) is OFCCP's newest enforcement protocol. Under this initiative, OFCCP will employ all of its compliance evaluation methodologies, i.e., Compliance Review, Compliance Check, Focused Review, and Offsite Review of Records (41 CFR 60-1.20). A federal contractor may be evaluated under any one or a combination of these methods. In addition, under ACE, federal contractors will undergo a more thorough review - beginning with a full desk audit.

2. Where can I find the ACE procedures?

The ACE procedures are outlined in Directive #295, signed December 16, 2010. Visit <http://www.dol.gov/ofccp/regs/compliance/directives/dir295.pdf>.

3. When will ACE procedures go into effect?

ACE became effective January 1, 2011. All supply & service (S&S) compliance evaluations scheduled on or after January 1, 2011, will be processed using ACE procedures.

4. Will ACE procedures be used to conduct compliance evaluations of construction contractors?

No. ACE procedures will only be used to conduct S&S compliance evaluations.

5. What happened to Active Case Management (ACM)?

ACM was rescinded on December 2, 2010, by Directive #292.

6. How is ACE different from ACM?

There are several major differences between ACE and ACM. Under ACE, OFCCP will use all of the compliance evaluation investigative methodologies specified in the regulations (i.e., compliance review, offsite review of records, compliance check and focused review), whereas under ACM, only the compliance review method was used. Under ACM, a full desk audit was only conducted where there were indicators of discrimination or in every 25th review. ACE procedures require a full desk audit in every compliance evaluation. Additionally, ACM procedures focused on identifying cases where there were 10 or more affected class members, whereas ACE does not have a minimum affected class member threshold.

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7. Does ACE affect preaward compliance evaluations?

No. Contracting officials are still required to request EEO clearance of prospective federal contractors receiving a non-construction contract award of \$10 million or more, unless the contractor's establishment has undergone a compliance evaluation and been found to be in compliance with OFCCP regulations within the past 24 months.

8. How was I selected for a compliance evaluation under ACE procedures?

Contractor establishments are selected for evaluation from the Federal Contractor Scheduling System (FCSS) using administratively neutral selection criteria.

9. How long is the exception period for establishments that undergo a compliance evaluation using ACE procedures?

Contractor establishments that have undergone a compliance evaluation will be excepted from selection for another compliance evaluation of any kind for 24 months from the date of closure of the compliance evaluation.

10. My establishment recently underwent a compliance evaluation. Will my establishment be subject to a compliance evaluation following ACE procedures during the exception period?

No. Contractor establishments will not be subject to schedule and review under ACE procedures during a contractor's existing exception period. Similarly, contractor establishments that are within an extended exception period, such as recent G-FIVE honorees, will not be subject to schedule and review under ACE procedures until the extended exception period expires.

11. Will I receive the standard Scheduling Letter and Itemized List when scheduled for a compliance evaluation using ACE procedures?

Yes. Contractors scheduled for a compliance evaluation will receive the standard Scheduling Letter and Itemized List identifying the contractor establishment selected for review. Per the Scheduling Letter and Itemized List, contractors are required to submit their AAPs and support data within 30 days of receipt of the Letter.

12. What is the difference between a compliance evaluation and a compliance review?

A compliance evaluation is the investigation and review process used by OFCCP to determine if a federal contractor is complying with the nondiscriminatory and affirmative action employment obligations outlined in 41 CFR Chapter 60. A compliance evaluation consists of any one or any combination of the following

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investigative procedures: compliance review; offsite review of records; compliance check; or focused review. (See 41 CFR 60-1.20(a), 60-250.20(a), 60-300.20(a) and 60.741.20(a)).

A compliance review is the most common investigative procedure used by OFCCP when conducting a compliance evaluation. It is a comprehensive analysis of the hiring and employment practices of the contractor, the written affirmative action program (AAP), and the results of the affirmative action efforts undertaken by the contractor. A compliance review may proceed in three stages: desk audit, onsite review and offsite analysis. (See 41 CFR 60-1.20(a)(1), 60-250.20(a)(1), 60-300.20(a)(1) and 60-741.20(a)(1)).

13. What methodologies may be used in a compliance evaluation?

A compliance evaluation may consist of any one or any combination of the following investigative procedures: compliance review; offsite review of records; compliance check; or focused review.

14. Can a compliance evaluation consist of more than one type of methodology?

Yes. OFCCP may utilize any one or a combination of compliance evaluation methodologies during the course of a review. For example, a compliance check may be expanded to a full compliance review where the contractor failed to maintain records. Nonetheless, all compliance evaluations will begin with a request for a current Affirmative Action Program and a full desk audit.

15. What is the difference between a full desk audit and a full compliance review?

A full desk audit is a comprehensive analysis of all of a contractor's written AAPs – Executive Order 11246 (EO 11246), Section 503 of the Rehabilitation Act of 1973 (Section 503) and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA) – and supporting documentation. These analyses include, but are not limited to, an impact ratio analysis, compensation analysis, and assessment of the reasonableness and acceptability of each AAP.

A full compliance review includes all three stages of a compliance review (i.e., full desk audit, onsite and offsite analysis) under EO 11246, Section 503 and VEVRAA.

16. Can a compliance evaluation close at the conclusion of the desk audit?

Yes. If indicators are not identified at the desk audit, OFCCP has the discretion to close the evaluation. Contractors will receive a closure letter by mail if the evaluation closes after the desk audit.

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17. How will I know which methodology will be used for my scheduled compliance evaluation?

All compliance evaluations will begin with a full desk audit. Where indicators are identified at the desk audit, the compliance evaluation will proceed as a compliance review, regardless of the designated investigative method identified by FCSS. Where indicators are not identified at the desk audit, the compliance evaluation may proceed using the designated investigative method identified by FCSS. The contractor will be notified at the conclusion of the desk audit either by phone or by mail about the methodology used to further conduct the compliance evaluation. If the evaluation is closed at the conclusion of the desk audit, the contractor will be sent a closure letter.

18. What factors will OFCCP consider when determining whether there are potential indicators of discrimination or other violations?

In addition to statistical and anecdotal evidence of discrimination, indicators of potential discrimination/violation also include, but are not limited to, patterns of individual discrimination, patterns of systemic discrimination, patterns of major technical violations such as recordkeeping deficiencies or failure to maintain an AAP, and noncompliance with other labor and employment laws that may relate to violations of the laws enforced by OFCCP.

19. Is an onsite review limited to the nature or scope of the indicators that triggered the review?

No, an onsite review is not limited to the nature or scope of the indicators that triggered the onsite review. An onsite review may be comprehensive in nature regardless of whether it was prompted by specific indicators of discrimination.

20. What is the subject of a focused review?

At the discretion of the Director of OFCCP, the subject for focused reviews may periodically change. The change will be announced on the OFCCP website prior to the release of a FCSS list. The initial focus area will be compliance with Section 503 and VEVRAA.