



OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS



EDUCATIONAL INSTITUTIONS

TECHNICAL ASSISTANCE GUIDE





dol.gov/ofccp

October 2019

Table of Contents

Purpose.....	2
OFCCP's Mission.....	4
OFCCP Responsibilities.....	4
Overview of EEO Legal Authorities.....	4
Laws Enforced by OFCCP.....	4
Executive Order 11246, as amended.....	4
Section 503 of the Rehabilitation Act of 1973, as amended (Section 503).....	5
Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA).....	5
OFCCP's Regulations.....	5
Two General Rules.....	5
Nondiscrimination.....	6
Affirmative Action Programs.....	7
Purpose.....	7
Thresholds.....	7
Single or Multiple AAPs.....	7
Timeframe to Create AAP(s).....	8
Functional Affirmative Action Programs (FAAPs).....	8
Determining Employment Status.....	8
Additional AAP Information and Resources.....	9
Overview of Required Components.....	10
Organizational Profile.....	13
Job Group Analysis.....	14
Instructional Staff.....	15
Non-Instructional Staff.....	16
Determining Availability.....	17
Instructional Staff.....	17
Non-Instructional Staff.....	17
Comparing Incumbency to Availability.....	18
Placement Goals.....	18
VEVRAA Hiring Benchmark for Protected Veterans.....	20
Section 503 Utilization Goal for Qualified Individuals with Disabilities.....	20
Recruitment Sources and Outreach.....	21
Action-Oriented Programs.....	22
Defining an Applicant.....	24
Personnel Activity.....	24
Compensation Systems.....	25

What to Expect During a Compliance Evaluation.....	26
Hiring.....	26
Special Considerations for Instructional Staff.....	26
Promotions.....	27
Instructional Staff.....	27
Non-Instructional Staff.....	29
Terminations.....	29
Non-Instructional Staff.....	29
Instructional Staff: Non-Tenure Track.....	29
Instructional Staff: Tenure Track.....	30
Compensation.....	30
Non-Instructional Staff.....	30
Instructional Staff: Non-Tenure Track.....	30
Instructional Staff: Tenured/Tenure Track.....	31
Compensation Analysis.....	32
Instructional Staff: Non-Tenure Track.....	32
Instructional Staff: Tenured/Tenure Track.....	32
Promotion.....	34
Religious Exemption.....	35
Additional Requirements.....	36
Equal Opportunity Clause.....	36
Record Retention.....	36
Invitation to Self-Identify.....	37
Designation of Responsibility and Policy Statement.....	39
EEO and Pay Transparency Postings and Notices.....	40
Reasonable Accommodation.....	40
What Are Reasonable Accommodations?.....	42
Examples of Reasonable Accommodations.....	42
Specialty Areas.....	43
Athletics.....	43
Medical.....	44
Online Institutions.....	44
Appendices.....	46
Appendix A: Glossary of Terms.....	48
Appendix B: Sample Organizational Files.....	62
Appendix C: Determining Availability.....	68
Appendix D: VEVRAA Self-ID Form Sample.....	69
Appendix E: How to Conduct an Adverse Impact Analysis.....	71



Purpose

The Office of Federal Contract Compliance Programs (OFCCP) places a strong emphasis on providing compliance assistance for federal government contractors.¹ 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 has a duty to enforce. OFCCP's compliance assistance comes in many forms. To name a few, OFCCP produces infographics, develops quick reference guides, answers frequently asked questions (FAQs), and regularly participates in educational seminars.

Educational institutions with federal contracts are subject to compliance evaluations that follow the same processes and procedures as all evaluations of supply and service contractors. Nonetheless, OFCCP recognizes that compliance evaluations of educational institutions may present unique challenges not only due to their numerous methods of governance, various organizational structures, and multiple workforces but also because they involve elements that can be difficult to quantify.

First, educational institutions generally fall into three major categories — universities, senior colleges, and junior/community colleges — and may be public or private which impacts their budget and governance. The organizational structure of an educational institution typically comprises separate components, such as schools, colleges, and departments that make up the institution, and an educational institution employs at least two distinct workforces: 1. instructional staff (including tenured, tenure track, and non-tenure track educators) and 2. non-instructional staff (including staff in positions that are executive, administrative, professional, technical, clerical, and all other non-teaching services at the institution).² Second, due to their complex organization, it is difficult to objectively measure educational institutions' hiring, promotion, and compensation of instructional staff. These elements may depend on personal factors such as the prestige of publications, research, discipline, and contributions to the institution.

¹ In this guide, "contractors" refers to covered federal government 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.

² For the purposes of this TAG, OFCCP will use the terms instructional staff and non-instructional staff to distinguish between the two workforces. Instructional staff refers to faculty members and others in a teaching capacity with a distinction made among tenured, tenure-track, and non-tenured. Non-instructional staff refers to all other employees who are not in a teaching capacity. OFCCP recognizes that faculty members may typically not identify as "instructional staff," but for the sake of simplicity and consistency in this TAG, OFCCP will use the term to capture all individuals with teaching duties regardless of designation.

This Technical Assistance Guide (TAG) is designed to assist contractors that are educational institutions to understand their obligations under the laws and regulations OFCCP enforces and to help them prepare for compliance evaluations. Specifically, this guide supports educational institutions in understanding their contractual obligations, explains how these contractors can best prepare for compliance evaluations, examines the unique circumstances that pertain to them compared to other contractors, and summarizes how OFCCP will assess their compliance with the laws and regulations it enforces. It is OFCCP's intent for this TAG 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 TAG aims to help educational institution contractors meet all of their obligations required under the law. It also highlights best practices and provides useful references.

³ To ensure that there is a clear distinction between regulatory requirements and recommended or best practices throughout the discussion in this guide, OFCCP either explicitly specifies regulatory requirements or denotes them by the use of "must."

This Technical Assistance Guide does not create new legal requirements or change legal requirements. It is intended as a basic resource document on OFCCP-administered laws. The legal requirements related to equal employment opportunity that apply to contractors are contained in the statutes, executive orders, and regulations cited in this guide. Every effort has been made to ensure that the information contained in this guide is current and accurate. OFCCP will update and modify the content of this guide when necessary.



OFCCP's Mission

OFCCP protects workers, promotes diversity and inclusion, and enforces the law. OFCCP holds those who do business with the federal government – including educational institutions with covered contracts (contract thresholds are listed in the section below) – 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. Contractors are also prohibited 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 contractors comply with regulatory requirements and understand OFCCP's compliance evaluation process.
- Conduct complaint investigations and compliance evaluations of contractors, including examining their personnel policies, actions, and practices.
- Connect contractors with the U.S. 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 contractors found to be in violation of the laws that OFCCP enforces.
- Monitor contractors' progress in fulfilling the terms of conciliation agreements by reviewing periodic compliance reports.
- Recommend enforcement actions to the Solicitor of Labor or the U.S. Department of Justice when necessary.

Overview of EEO Legal Authorities

OFCCP administers and enforces three equal employment opportunity laws that prohibit contractors from discriminating against applicants and employees, and require them to take affirmative action. It is a violation of these laws for contractors to 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 Enforced by OFCCP

Executive Order 11246, as amended

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 with contracts more than \$10,000.

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

Section 503 prohibits employment discrimination on the basis of disability and requires 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 applies to contractors with a contract of more than \$15,000.⁴

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 contractors with a contract of more than \$150,000.⁵

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.

Two General Rules

For an educational institution contractor to comply 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.

⁴ Effective October 1, 2010, the coverage threshold under Section 503 increased from \$10,000 to \$15,000, under the inflationary adjustment requirements in 41 U.S.C. 1908. See Federal Acquisition Regulation, Inflation Adjustment of Acquisition-Related Thresholds, 75 FR 53129 (Aug. 30, 2010).

⁵ Effective October 1, 2015, the coverage threshold under VEVRAA increased from \$100,000 to \$150,000, under the inflationary adjustment requirements in 41 U.S.C. 1908. See Federal Acquisition Regulation, Inflation Adjustment of Acquisition-Related Thresholds, 80 FR 38293 (July 2, 2015).



Nondiscrimination

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 veterans
- Individuals with disabilities
- 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), such as refusing to hire an applicant because of their religion, or it may 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). An example of disparate treatment discrimination could be that an institution's search committee favored married men over married women based on assumptions that female applicants' husbands are less "moveable" than male applicants' wives. An example that could present disparate impact discrimination is a contractor's practice of recruiting alumni from specific institutions that has an adverse impact on members of a particular racial or ethnic group unless the contractor can demonstrate that the practice is related to the job and necessary for the business.

Affirmative Action Programs

Contractors that have 50 or more employees and contracts that meet the required dollar thresholds are required to develop written affirmative action programs (AAPs) under the laws and regulations OFCCP enforces.⁶ Contractors generally must develop an AAP for each location, facility, or establishment that has 50 or more employees and that meets the threshold set for the value of the contract.⁷

Purpose

The overall objectives of AAPs are to:

- Ensure equal employment opportunity by institutionalizing the contractor's commitment to equality in every aspect of the employment process.
- Identify areas in the workforce in which there is an underutilization of women, minorities, individuals with disabilities, or protected veterans.
- Develop and execute action-oriented programs to address any identified underutilization.

Thresholds

- Under Executive Order 11246 and Section 503, contractors with 50 or more employees and a contract of \$50,000 or more are required to develop and maintain written AAPs.
- Under VEVRAA, contractors with 50 or more employees and a contract of \$150,000 or more are required to develop and maintain a written AAP.

The Executive Order 11246 AAP must be prepared under the requirements of 41 CFR § 60-1.40 and part 60-2. The Section 503 AAP must be prepared under the requirements of 41 CFR part 60-741 subpart C.

The VEVRAA AAP must be prepared under the requirements of 41 CFR part 60-300 subpart C.

Single or Multiple AAPs

Educational institutions may develop and implement a single AAP or multiple AAPs, depending on how the operations of the educational institution is organized. Some contractors with campus-like settings may have multiple buildings or schools that each constitute an establishment for the purposes of developing and maintaining an AAP, while others may determine that a single AAP for all buildings or schools better fits their operations, size, and organizational structure. Educational institutions should consider several factors in analyzing the extent to which the operations of various buildings are distinct or interconnected in determining the appropriate AAP structure:

- a. What is the function of the building, and how do the employees in the building interact with employees in other buildings?
- b. Are employees across different buildings part of the same organizational unit, such as department, division, section, branch, group, job family, or project team?
- c. Are the hiring, compensation, and other personnel decisions handled separately at each building, or are those functions consolidated across multiple buildings?

⁶ OFCCP's regulations implementing Executive Order 11246, Section 503, and VEVRAA define a government contract as "any agreement or modification thereof between any contracting agency and any person for the purchase, sale or use of personal property or nonpersonal services." See 41 C.F.R. §§ 60-1.3; 60-300.2; 60-741.2. The term has generally not been extended to arrangements in which the primary purpose is extending help or support by conferring grants or other benefits under federal assistance programs. Thus, except for federally assisted construction contracts, which are specifically covered by sections 301-304 of Executive Order 11246, neither Executive Order 11246, nor Section 503, nor VEVRAA applies to arrangements involving federal financial assistance. For example, solely serving as a conduit for Pell Grants does not render a post-secondary higher education institution a covered contractor. See OFCCP Opinion Letter 2019-01 (May 23, 2019), <https://www.dol.gov/ofccp/regs/compliance/opinionletters/PellGrants.html>.

⁷ OFCCP's jurisdictional thresholds infographic can be found at <https://www.dol.gov/ofccp/posters/Infographics/JurisdictionalThresholds.htm>.

- d. Does each building handle its own recruitment, or is that function consolidated across multiple buildings?
- e. To what extent are other human resources and EEO compliance functions operationally distinct for each building?
- f. To what extent do certain employees perform work functions across various buildings?
- g. To what extent are employees across buildings transferable or interchangeable?

Educational institutions sometimes determine that establishing multiple AAPs is more appropriate. While that may be the best approach in some cases, OFCCP reminds educational institutions to consider all relevant factors when deciding between a single AAP and multiple AAPs. Here are some examples to consider:

- If an academic institution houses on campus a medical school, a law school, and other schools, colleges, and departments that operate distinctly with different human resource departments and limited employee interaction, it would likely be appropriate to group the distinct units into separate AAPs.
- If an educational institution has instructional staff who teach classes in different schools, colleges, and departments, or a medical school with a teaching hospital where instructional staff and other staff split time between the various components, such that the operations of the various units are more interconnected, it would likely be appropriate to treat the entire location as a single establishment.

Timeframe to Create AAP(s)

If an educational institution is required to have an AAP, it must develop it within 120 days from the start of the contract and must update it annually. The AAP is the foundation upon which employers base their compliance with Executive Order 11246, Section 503, and VEVRAA.

41 CFR §§ 60-2.1(c),
60-300.40, 60-
741.40(b)

An AAP is a management plan for ensuring equal employment opportunity. It sets forth 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.

Functional Affirmative Action Programs (FAAPs)

Supply and service contractors subject to AAP requirements may request a functional affirmative action program (FAAP) agreement, which permits the development and use of AAPs based on functional or business units. A functional or business unit refers to a component within an organization that operates autonomously in the ordinary course of the organization's business.

41 CFR § 60-2.1(d)
(4)

Determining Employment Status

Each employee in the contractor's workforce must be included in an AAP. OFCCP generally uses the common-law agency test for determining who is an employee under OFCCP programs. In general, if an educational institution is not sure whether an individual in its workforce—such as an adjunct faculty member or a medical resident—is an “employee,” it should examine the individual worker's relationship to the educational institution using certain, specific factors derived from the U.S.

Supreme Court decision *Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318 (1992).⁸ Except as described below, if the educational institution's application of the *Darden* factors to the individual indicates that he or she is an employee under that test, the individual must be included in an AAP.

However, OFCCP recognizes the difficulty educational institutions face in determining whether student workers meet the multifactor tests for employee status and, accordingly, whether such workers should be included in an AAP.⁹ In addition, OFCCP has an interest in focusing its time, attention, and resources on individuals whose primary relationship with the educational institution is work-related. On September 5, 2019, OFCCP issued Directive 2019-05 to provide clarity on this subject.¹⁰ As announced there, OFCCP will not cite violations for excluding student workers from AAPs or personnel activity data submissions in compliance evaluations. OFCCP will, however, continue to accept and consider complaints filed by and on behalf of student workers at these educational institutions, and its evaluations of the employee status of any such student workers are guided by the *Darden* factors and other legal principles discussed in Directive 2019-05.

Additional AAP Information and Resources

Once developed, the AAP must be available to be submitted to OFCCP when it is requested during a compliance evaluation. Section 503 and VEVRAA AAPs, absent the data metrics required by 41 CFR §§ 60-300.44(k) and 60-741.44(k), must also be available to applicants and employees upon request.¹¹

41 CFR §§ 60-300.41, 60-741.41.

The regulations implementing each law prescribe the required elements of AAPs (OFCCP provides sample AAPs on its website at <https://www.dol.gov/ofccp/regs/compliance/aaps/aaps.htm>). The descriptions of compliance actions are intended to illustrate possible compliance activities but should not be viewed as contractor performance mandates. Contractors are encouraged to tailor their AAPs to include specific actions they have taken, or plan to take, to comply with the regulatory EEO requirements, and to describe innovative strategies they have employed, or plan to employ, to enhance the success of their respective programs.

OFCCP provides free compliance assistance to employers who need help understanding the AAP requirements and developing AAPs.

⁸ See Frequently Asked Questions: Employer-Employee Relationship, <https://www.dol.gov/ofccp/regs/compliance/faqs/EmpRelationship.html>. No one factor under the *Darden* test is decisive, but some examples include the extent to which the educational institution controls the individual's work schedule, the duration of the relationship between the parties, and the method of payment the individual receives. The full list of factors is provided in OFCCP's FAQ on the topic.

⁹ For the purpose of this TAG, a "student worker" is a student, undergraduate or graduate, engaged in research, teaching, work-study, or another related or comparable position at an educational institution. The individual's primary relationship with the institution is educational, and the student's working relationship with the educational institution has been obtained as a result of or in conjunction with his or her studies.

¹⁰ See OFCCP, Directive 2019-05, Contractors' Obligations Regarding Students in Working Relationships with Educational Institutions (Sept. 5, 2019), www.dol.gov/ofccp/regs/compliance/directives/dir2019_05.html.

¹¹ 60-300.44(k) (k) Data collection analysis. The contractor shall document the following computations or comparisons pertaining to applicants and hires on an annual basis and maintain them for a period of three (3) years: (1) The number of applicants who self-identified as protected veterans pursuant to §60-300.42(a), or who are otherwise known as protected veterans; (2) The total number of job openings and total number of jobs filled; (3) The total number of applicants for all jobs; (4) The number of protected veteran applicants hired; and (5) The total number of applicants hired. 60-741.44(k) (k) Data collection analysis. The contractor shall document the following computations or comparisons pertaining to applicants and hires on an annual basis and maintain them for a period of three (3) years: (1) The number of applicants who self-identified as individuals with disabilities pursuant to §60-741.42(a), or who are otherwise known to be individuals with disabilities; (2) The total number of job openings and total number of jobs filled; (3) The total number of applicants for all jobs; (4) The number of applicants with disabilities hired; and (5) The total number of applicants hired.

Overview of Required Components

See generally 41 CFR
part 60-2 subpart B.

Executive Order 11246 AAPs must include:

1. An **organizational profile** of the company's workforce at the establishment using an "organizational display" or "workforce analysis" that provides detailed data reflecting staffing patterns within the establishment.
2. A **job group analysis** that combines jobs at the establishment with similar content, wage rates, and opportunities to form job groups. The job group analysis facilitates the comparison of the representation of minorities and women in the contractor's workforce with the estimated availability of minorities and women qualified for employment.
3. A utilization analysis that includes the placement of the contractor's employees into the job groups, the determination of the **availability** for the employment of minorities and women for the job groups, and a comparison of their incumbency in the job groups to their availability for those job groups.
4. If the utilization analysis reveals underutilization, **placement goals** that serve as reasonably attainable objectives and to measure progress toward achieving equal employment opportunity.
5. **Designation of responsibility** to ensure the effective implementation of the AAP.
6. **Identification of problem areas** that are impediments to equal employment opportunity, including evaluation, by organizational unit and job group, of the utilization and placement of minority and female employees in the workforce.
7. If problem areas are identified, a description of **action-oriented programs** to eliminate problems and to attain established goals and objectives.
8. Description of an **internal audit and reporting system** to measure the effectiveness of the total affirmative action program.
9. **Documentation** of analyses and support data used to identify problem areas.
10. The prior year's **personnel activity data**.

organizational profile
See page 13

job group analysis
See page 14

availability
See page 17

placement goals
See page 18

action-oriented programs
See page 48

Additionally, contractors are required to maintain, and make available to OFCCP upon request, data and information necessary to determine compliance with Executive Order 11246 obligations, including, for example, workforce compensation data.

41 CFR 60-2.32.

Although different from those under Executive Order 11246, the requirements under Section 503 and VEVRAA mirror each other, with a few specific exceptions. The shared elements are listed below first, followed by the individualized elements.

See generally 41 CFR part 60-300 subpart C (VEVRAA) and 41 CFR part 60-741 subpart C (Section 503).

Under both Section 503 and VEVRAA, the AAP must include:

- An EEO policy statement. 41 CFR 60-741.44(a) and 41 CFR 60-300.44(a)
- Documentation that the contractor reviews personnel processes 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. 41 CFR 60-741.44(b) and 41 CFR 60-300.44(b)
- Documentation that the contractor periodically reviews 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. 41 CFR 60-741.44(c) and 41 CFR 60-300.44(c)
- Confirmation that the contractor complies with reasonable accommodation requirements, both as a matter of nondiscrimination and as a matter of affirmative action. 41 CFR 60-741.44(d) and 41 CFR 60-300.44(d)
- Documentation that the contractor has developed and implemented procedures to ensure that its employees are not harassed on the basis of disability or because of their status as a protected veteran. 41 CFR 60-741.44(e) and 41 CFR 60-300.44(e)
- Documentation of the contractor's external dissemination of its EEO policy. 41 CFR 60-741.44(f) and 41 CFR 60-300.44(f)
- Documentation and assessment of the contractor's outreach and positive recruitment activities that are reasonably designed to be effective in recruiting qualified individuals with disabilities and protected veterans. 41 CFR 60-741.44(f)(3) & (4) and 41 CFR 60-300.44(f)(3) & (4)
- Documentation of the contractor's internal dissemination of its EEO policy. 41 CFR 60-741.44(g) and 41 CFR 60-300.44(g)
- Description and documentation of the contractor's internal audit and reporting system to measure the effectiveness of its total AAP. 41 CFR 60-741.44(h) and 41 CFR 60-300.44(h)
- Designation of responsibility to direct, manage, and ensure the implementation of the AAP. 41 CFR 60-741.44(i) and 41 CFR 60-300.44(i)
- Documentation of training provided to all personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes about the contractor's EEO obligations and affirmative action commitments under Section 503 and VEVRAA. 41 CFR 60-741.44(j) and 41 CFR 60-300.44(j)

Additional requirements specific to the Section 503 AAP:

- Documentation of the contractor's annual evaluation of the utilization of individuals with disabilities compared to the 7% utilization goal, identification of problem areas, and establishment of action-oriented programs to correct any identified problem areas. 41 CFR 60-741.45
- Documentation that the contractor extends an invitation for voluntary self-identification as an individual with a disability at the pre-offer and post-offer phases of the hiring process, as well as to all of its employees every five years.¹² 41 CFR 60-741.42

¹² Contractors must use the official Voluntary Self-Identification of Disability Form available on the agency's website at https://www.dol.gov/ofccp/regs/compliance/sec503/Self_ID_Forms/SelfIDForms.htm.

- Documentation of the Section 503 data collection analysis, which requires the contractor to document and update the following information annually as part of its AAP. 41 CFR 60-741.44(k)
 - » The total number of applicants for all jobs.
 - » The total number of applicants hired.
 - » The number of applicants who self-identified as individuals with disabilities or are otherwise known to be individuals with disabilities.
 - » The number of applicants with disabilities hired.
 - » The total number of job openings and the total number of jobs filled.

Additional requirements specific to the VEVRAA AAP:

- Documentation that the contractor has set an annual hiring benchmark using one of the following two methodologies. 41 CFR 60-300.45
 - » 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, shown at the bottom of the page. 41 CFR 60-300.42
- Documentation that the contractor extends an invitation for voluntary self-identification as a protected veteran at both the pre-offer and post-offer phases of the hiring process.¹³
- Documentation that the contractor complies with the requirement to list its employment openings with the appropriate employment service delivery system (ESDS).¹⁴ 41 CFR 60-300.5(a)
- Documentation of the VEVRAA data collection analysis, which requires the contractor to document and update the following information annually as part of its AAP. 41 CFR 60-300.44(k)
 - » The total number of applicants for all jobs.
 - » The total number of applicants hired.
 - » The number of applicants who self-identified as protected veterans or are otherwise known as protected veterans.
 - » The number of protected veteran applicants hired.
 - » The total number of job openings and total number of jobs filled.

Setting a Customized VEVRAA Hiring Benchmark

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

- i. The average percentage of veterans in the civilian labor force for the state(s) covered by the AAP, for the previous three years.
- ii. The number of veterans who participated in the employment service delivery system in the state(s) covered by the AAP, over the previous four quarters.
- iii. The applicant ratio and hiring ratio for the location(s) covered by the AAP for the previous year.
- iv. The most recent assessment of the effectiveness of the contractor's outreach and recruitment efforts.
- v. Any other factor, such as the nature of the job openings or the location of the construction work, that would tend to affect the availability of qualified protected veterans.

¹³ The regulations contain a sample invitation to self-identify at [Appendix B to 41 CFR part 60-300](#).

¹⁴ 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. For more information on ESDS, visit the VEVRAA FAQs at www.dol.gov/ofccp/regs/compliance/faqs/VEVRAA_faq.htm.

Organizational Profile

An organizational profile depicts a contractor's staffing pattern. OFCCP allows contractors to disclose this data in the form of an organizational display **or** a workforce analysis. The format used to communicate the data is solely at the discretion of the contractor. The educational institution should develop an organizational profile to reflect its staffing guidelines and policies.

41 CFR 60-2.11

An **organizational display** (Appendix B) must identify each organizational unit in the establishment and show the relationship of each organizational unit to the other organizational units in the establishment. For example, an organizational unit at an educational institution may be a school, college, or department. For each organizational unit, the organizational display must indicate the following:

- The name of the unit.
- The job title, gender, race, and ethnicity of the unit supervisor.
- The total number of male and female employees in the unit.
- The total number of male and female employees in each of the following groups: Black, Hispanic, Asian/Pacific Islander, and American Indian/Alaskan Native.¹⁵

A **workforce analysis** (Appendix B) is a listing of all job titles, ranked from the lowest paid to the highest paid within each organizational unit (typically a school, college, or department), including unit supervision. The workforce analysis must include information by job title, wage rate, department and/or organizational unit, and lines of progression. Lines of progression will show a clear picture regarding personnel actions and activities of all instructional and non-instructional staff. For each job title, the workforce analysis must list the following:

- The total number of employees.
- The total number of male and female employees.
- The total number of male and female employees in each of the following groups: Black, Hispanic, Asian/Pacific Islander, and American Indian/Alaskan Native.
- The wage rate or salary range.

The racial and ethnic categories are found in 41 CFR 60-2.11(c)(4)

OFCCP will also accept AAPs and supporting records that reflect the following EEO-1 race and ethnicity categories: 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), and Two or More Races (Not Hispanic or Latino).

OFCCP recognizes that not all employees will choose to voluntarily self-identify. For those “unknowns,” OFCCP Directive 2008-02 provides as follows: “self-identification will remain the preferred method for compiling information about the sex, race or ethnicity of applicants and employees. A contractor’s invitation to self-identify race or ethnicity should state that the submission of such information is voluntary. However, contractors may use post-employment records or visual observation when an individual declines to self-identify his or her race or ethnicity.”¹⁶

¹⁵ These are the racial and ethnic categories listed in 41 CFR 60-2.11(b)(3)(iv). OFCCP will also accept AAPs and supporting records that reflect the following revised EEO-1 race and ethnicity categories: 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), and Two or More Races (Not Hispanic or Latino).

¹⁶ See Directive 2008-02, Federal Contractors’ Obligation to Maintain and Analyze Race and Ethnicity Data of Applicants and Employees in AAPs Prepared in Accordance with Executive Order 11246, as amended (referenced as Transmittal No. 283 and ADM Notice/Other), August 14, 2008, <https://www.dol.gov/ofccp/regs/compliance/directives/dir283.pdf>.

Job Group Analysis

A job group analysis is the first step in the contractor's comparison of the representation of minorities and women in its workforce with the estimated availability of minorities and women qualified to be employed in the relevant labor market. The Executive Order 11246 regulations require that job groups be established by combining jobs having similar content, wage rates, and opportunities. Similarity of content refers to the duties and responsibilities of the job titles which make up the job group. Similarity of opportunities refers to training, transfers, promotions, pay, mobility, and other career enhancement opportunities offered by the jobs within the job group.

41 CFR 60-2.12

See Determining Availability Section, page 17

The job group analysis must include a list of the job titles that make up each job group. If a job group analysis contains jobs that are located at another establishment, the job group analysis must be annotated to identify the actual location of those jobs. If the establishment at which the jobs are located maintains an AAP, the job group analysis of that AAP must be annotated to identify the AAP in which the jobs are included. Except as provided in 41 CFR 60-2.1(d), all jobs located at an establishment must be reported in the job group analysis of that establishment.

41 CFR 60-2.1(d), (e)

When possible, job groups should have enough incumbents to permit the institution to conduct meaningful comparisons of incumbency to availability and, if necessary, to set goals. For many job titles, the available data that can be collected are limited, and the same data must be used for several related jobs. Also, many job titles have so few incumbents in them that identifying disparities between incumbency and availability by job title would be meaningless, yielding problem areas defined in terms of fractions of people. Therefore, grouping related job titles together is logical and typically the best approach.

Regardless of job group size, job groups must reflect certain distinctions that are crucial for meaningful analysis. For example, the distinction between tenured, tenure-track, and non-tenured instructional staff and among organizational units may be important because appointments at the tenured/tenure-track level might draw from different applicant populations than do appointments at the non-tenured level. Also, the availability of women and minorities may vary greatly from one academic specialty area to another. The contractor must separately state the percentage of minorities and the percentage of women it employs in each job group.

41 CFR 60-2.13

Job groups should align with hiring, promotion, and compensation practices. OFCCP does not dictate how an institution may establish its job groups, but they must meet the parameters noted above.

The type and number of job groups are dependent on the size of the educational institution. The following identifies examples of job groups for a medium to a large educational institution.



Instructional Staff

For classifying instructional staff the institution may follow the Classification of Instructional Programs (CIP) Codes when grouping instructional programs.¹⁷ Examples of possible instructional staff job groups are found below.

Example #1: *Within a specific discipline or department*

- Tenured Professors
- Tenure-Track Associate Professors
- Non-Tenure Track Associate Professors

Example #2: *Within different schools*

- Ladder – Tenured (Professor; Associate Professor Tenure)
- Ladder – Non-Tenured (Assistant Professor)
- Non-Ladder – Adjunct (Professor Adjunct; Assistant Professor Adjunct)
- Non-Ladder – Instructional (Senior Lecturer, Lecturer, Tutor)
- Non-Ladder – Visiting (Visiting Professor; Visiting Associate Professor)
- Research

Example #3: *Across schools*

- Professor
- Associate Professor
- Assistant Professor
- Adjunct Professor
- Visiting Professor
- Lecturer

¹⁷ CIP codes are found at nces.ed.gov/ipeds/cipcode/.

Non-Instructional Staff

For non-instructional staff, several methods could be utilized as the basis for forming job groups.

- The institution may follow the Integrated Postsecondary Education Data System (IPEDS) Categories, which use Standard Occupational Classification (SOC) Codes: <https://nces.ed.gov/ipeds/report-your-data/taxonomies-standard-occupational-classification-soc-codes>.
 1. Educational Occupations
 2. Library and Instructional Support Occupations
 3. Management Occupations
 4. Business and Financial Occupations
 5. Computer, Engineering, and Science Occupations
 6. Community, Social Service, Legal, Arts, Design, Entertainment, Sports and Media Occupations
 7. HealthCare Practitioners and Technical Occupations
 8. Service Occupations
 9. Sales and Related Occupations
 10. Office and Administrative Support Occupations
 11. Natural Resources, Construction and Maintenance Occupations
 12. Production, Transportation and Material Moving Occupations
 13. Graduate Assistants
- Before the IPEDS, educational institutions submitted EEO-6 Reports and the categories utilized in those reports may still be used as a model.
 1. Executive/Administrative/Managerial
 2. Faculty
 3. Professional Non-Faculty
 4. Clerical and Secretarial
 5. Technical and Para-Professional
 6. Skilled Craft
 7. Service/Maintenance
- Currently, organizations other than educational institutions utilize EEO-1 Reports to categorize their workforces. Institutions may use these categories for non-instructional staff.
 1. Executive/Senior Level Officials and Managers
 - 1A. Mid/First Level Officials and Managers
 2. Professionals
 3. Technicians
 4. Sales
 5. Office and Clerical
 6. Craft Workers
 7. Operatives
 8. Laborers and Helpers
 9. Service Workers

If the categories used are too broad for meaningful analyses, they may still serve as a starting point for narrowing down to the appropriate job groups.

Determining Availability

Availability is an estimate of the number of minorities or women available and qualified for employment for a given job group in the relevant labor market during the lifecycle of the AAP. Availability indicates the approximate level at which minorities or women could reasonably be expected to be represented in a job group if employment decisions are being made without regard to gender or minority status. The most current statistical information available must be used in deriving availability figures. Correct comparisons of incumbency to availability, meaningful and attainable goals, and equal employment opportunity for protected groups are dependent on competent and accurate availability analyses.

41 CFR 60-2.14

The institution must separately determine the availability of minorities and women for each job group, considering at least the following two factors.

Factor 1: The percentage of minorities or women possessing the requisite skills in the reasonable recruitment area, meaning the geographical area from which the institution usually seeks or reasonably could seek qualified applicants to fill the positions.

Factor 2: The percentage of minority or women employees who are promotable, transferable, and trainable within the institution.

Where a job group is composed of different job titles that have different availability rates, a composite availability figure should be calculated by determining the proportion of the job group incumbents employed in each job title, weighting the availability for each job title by the proportion of incumbents employed in that title, and adding together the weighted availability estimates.

Instructional Staff

The reasonable recruitment area is the geographical area from which the institution usually seeks or reasonably could seek qualified applicants to fill the positions. For specialized fields, the reasonable recruitment area is often nationwide. In determining availability for instructional staff job groups, the educational institution should rely on data from a variety of sources utilizing the most recent statistics available. If any international recruitment is conducted by the institution, that information should be annotated in the analysis. See Appendix C.

Non-Instructional Staff

For all non-instructional job groups, the same two factors, external and internal availability, should be considered in determining availability. The data used to estimate external availability should be based on the reasonable recruitment area for the specific job group. For example, the reasonable recruitment area for an Executive/Administrative job group would likely be nationwide, whereas the reasonable recruitment area for an Office and Clerical Positions job group would likely be more local to the institution.

The U.S. Census Bureau through the American Fact Finder website contains nationwide census data, and data by state, Metropolitan Statistical Area (MSA), or county for specific jobs.¹⁸

¹⁸ factfinder.census.gov/faces/nav/jsf/pages/download_center.xhtml.

Comparing Incumbency to Availability

Executive Order 11246 regulations require the contractor to compare the percentage of minorities and women in each job group to their availability as determined above. If the percentage of minorities or women employed in a specific job group is less than would reasonably be expected given their availability percentage in that particular job group, then underutilization exists.

41 CFR 60-2.15

The institution may choose from a variety of methods for identifying underutilization, including the following options.

- The “any difference” rule: whether any difference exists between the availability of minorities or women for employment in a job group and the number of such persons employed in the job group.
- The “whole person” rule: whether the difference between availability and the actual employment of minorities or women equals one person or more.
- The “80%” rule: whether actual employment of minorities or women is less than 80% of their availability.
- The “two standard deviations” analysis: whether the difference between availability and the actual employment of minorities or women exceeds the two standard deviations test of statistical significance.

While there is no preferred method, the educational institution must note the methodology it uses in the AAP. The same methodology should be applied to all job groups, if possible (as determined by the size of the job group), and contractors should not use more than one method so as to mask underutilization. No matter the method used, the contractor should be able to explain why it selected that method.

Placement Goals

For any job group for which the contractor identifies underutilization of women or minorities as described above, the contractor must establish a placement goal at least equal to the availability of women or minorities, as appropriate, for that job group. Placement goals serve as reasonably attainable objectives and are also used to measure progress toward achieving equal employment opportunity. These goals are not quotas that must be met. Quotas are expressly forbidden by law. Placement goals do not create set-asides for specific groups, nor are they designed to achieve proportional representation or equal results. Rather, they encourage good faith efforts to make all aspects of the entire affirmative action program work.

41 CFR 60-2.16

As a best practice, OFCCP recommends that contractors set disaggregated placement goals for job groups when specific minority groups are underutilized. As is done for a single minority goal, the contractor using this approach would compare the percentage of qualified people available to work in the reasonable recruitment area to the number of employees in each job group, for each race or ethnicity category. If the availability percentage is less than the percentage of employees in a particular category, the contractor would set a placement goal for that particular racial or ethnic group. However, the contractor must continue to set a single aggregate minority placement goal even when setting disaggregated placement goals.



Placement goals:

- Can be reached through the implementation of action-oriented programs such as recruiting and advertising to increase the pool of qualified minority and female applicants.
- Do not require that educational institutions hire a specified number of minorities or women.
- Do not require the hiring of a person who lacks qualifications to perform the job successfully, or the hiring of a less qualified person in preference to a more qualified one.
- Are neither a ceiling nor a floor for the employment of particular groups.
- Do not provide a justification to extend a preference to any individual, select an individual, or adversely affect an individual's employment status, on the basis of that individual's race, color, religion, sex, sexual orientation, gender identity, or national origin.

For any job group that shows female or minority underutilization, the placement goal should be set at least equal to the determined availability for that job group in the form of a percentage, not a number.

VEVRAA Hiring Benchmark for Protected Veterans

Contractors covered by the VEVRAA 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.¹⁹ The VEVRAA hiring benchmark is not a quota but, rather, a quantifiable method by which the institution can measure its progress toward achieving equal employment opportunity for protected veterans.

41 CFR 60-300.45

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, internal and external, who are protected veterans hired during that AAP year. This is different than the disability utilization goal analysis (described below), 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 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.²⁰
- Option 2: Establish a customized benchmark taking into account at least five factors.²¹

41 CFR 60-300.45(b)(2)

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 the Section 503 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.

41 CFR 60-741.45

- Generally, the institution should apply the 7% utilization goal to the same job groups that it created for the Executive Order 11246 AAP.
- If the institution has a total workforce of 100 or fewer employees, it has the option of applying the 7% utilization goal to its workforce as a whole.

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.

(i) The average percentage of veterans in the civilian labor force in the State(s) where the contractor is located over the preceding three years, as calculated by the Bureau of Labor Statistics and published on the OFCCP website; (ii) The number of veterans, over the previous four quarters, who were participants in the employment service delivery system in the State where the contractor is located, as tabulated by the Veterans' Employment and Training Service and published on the OFCCP website; (iii) The applicant ratio and hiring ratio for the previous year, based on the data collected pursuant to §60-300.44(k); (iv) The contractor's recent assessments of the effectiveness of its external outreach and recruitment efforts, as set forth in §60-300.44(f)(3); and (v) Any other factors, including but not limited to the nature of the contractor's job openings and/or its location, which would tend to affect the availability of qualified protected veterans.

¹⁹ OFCCP, VEVRAA Benchmark Database, <https://ofccp.dol-esa.gov/errd/VEVRAA.jsp>.

²⁰ OFCCP, Annual VEVRAA Benchmark Effective Dates, <https://www.dol.gov/ofccp/regs/compliance/AnnualVEVRAABenchmarkEffectiveDates.htm>.

²¹ See five factors on page 12.

Recruitment Sources and Outreach

Under Executive Order 11246, if the educational institution determines from the comparisons of utilization to availability that any job group is underutilizing women or minorities, it is required to demonstrate through good faith efforts that it has developed ongoing relationships with recruitment sources that can provide qualified female or minority applicants to fill employment openings. Some suggested recruitment sources include:

- The educational institution may join higher education recruitment organizations to connect directly with female and minority applicants through job postings and job fairs, or a local or national higher education consortium.
- The educational institution may advertise its vacancy announcements with career centers at other similar schools, as well as with professional organizations with large membership rolls in the relevant disciplines.

Under Section 503 and VEVRAA, the educational institution is required to undertake appropriate outreach and positive recruitment activities that are reasonably designed to be effective in recruiting qualified individuals with disabilities and protected veterans.

OFCCP recognizes that educational institutions may use distinct recruitment procedures for instructional positions, such as search committees. However, some similarities may exist in the recruitment of non-instructional and instructional staff. Some suggested recruitment activities include:

- Enlisting the support of state and local recruitment agencies such as sheltered workshops, the Local Veterans' Employment Representative, and veterans' counselors.
- Discussing recruitment efforts on the institution's premises with representatives from recruitment sources.
- Building relationships with transition coordinators within the military branches.
- Making employees who are veterans and/or have disabilities available for career days, youth motivation programs, and related activities in the community.
- Enlisting the assistance and support of the following persons and organizations in recruiting, and developing on-the-job training opportunities for veterans and individuals with disabilities, to fulfill its commitment to provide equal employment opportunity for such individuals:
 - » The State Vocational Rehabilitation Service Agency (SVRA), state mental health agency, or state developmental disability agency in the area of the contractor's establishment;
 - » The American Job Center nearest the contractor's establishment;
 - » The U.S. Department of Veterans Affairs Regional Office nearest the contractor's establishment;²²
 - » 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);²³
 - » 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;²⁴

²² www.va.gov/directory/guide/division.asp?dnum=3

²³ www.askearn.org

²⁴ choosework.ssa.gov/findhelp/

- » Local disability groups, organizations, or Centers for Independent Living (CIL) near the contractor's establishment;
- » Placement or career offices of other educational institutions that specialize in the placement of individuals with disabilities; and
- » Private recruitment sources, such as professional organizations or employment placement services that specialize in the placement of individuals with disabilities.

The employer should keep materials evidencing its affirmative action efforts. This may include items such as copies of collective bargaining agreements and other documents that indicate employment policies and practices; copies of letters sent to suppliers and vendors stating the EEO/affirmative action policy; copies of letters sent to recruitment sources and community organizations; and copies of contract language incorporating the regulatory equal opportunity clause.

41 CFR 60-1.4

Action-Oriented Programs

Under Executive Order 11246, contractors must develop and execute action-oriented programs designed to correct any identified problem areas and to attain established goals and objectives.

41 CFR 60-2.17(c)

The content of this section of the AAP depends upon the nature of the problem areas identified through the educational institution's in-depth analyses of its personnel practices, policies, and procedures. Once a problem area has been identified, an educational institution must develop and implement a program to correct that problem area. The action-oriented programs must consist of more than following the same procedures that have previously produced inadequate results.

Action-oriented programs should be specific and result-oriented to accomplish the aims for which they are created. "Specific" means describing what action is to be taken, who is responsible for performing the action, and when the action will be accomplished. "Result-oriented" means that proper execution of the program will likely remove the identified impediment to equal employment opportunity or otherwise increase the success of the AAP in the identified problem area. The action-oriented programs must be described in the AAP, and the educational institution must demonstrate that it has made good faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results.

Educational institutions must institute action-oriented programs to eliminate identified problem areas and to help achieve specific affirmative action goals. Contractors may create and implement these programs in the way that best suits their needs and organizational structures. The table that follows provides the requirements and some best practices related to action-oriented programs.

BEST PRACTICES AND REQUIREMENTS	
BEST PRACTICES	REQUIREMENTS
Form diverse instructional staff search committees.	Base hiring decisions on job-related knowledge, skills, and abilities.
Use objective selection tools to ensure a more uniform assessment of applicants.	<p>Ensure the selection process is free from bias through:</p> <ul style="list-style-type: none"> • Review of job applications and other pre-employment forms to ensure information requested is job related; • Evaluation of selection methods that have an adverse impact to ensure that they are job related and consistent with business necessity; and • Training in EEO for management and supervisory staff.
Ensure recruitment sources are available to all members of management involved in the recruiting, screening, selection, and promotion processes.	
Create mentoring partnerships within and outside your organization.	
Recruit from a variety of recruitment sources.	
Use techniques to improve recruitment and increase the flow of minority and female applicants.	
<ul style="list-style-type: none"> • Place help wanted advertisements, when appropriate, in local minority news media and women's interest media; • Disseminate information on job opportunities to organizations representing minorities and women and employment development agencies when job opportunities occur; • Encourage all employees to refer qualified applicants; • Actively recruit at secondary schools, junior colleges, colleges and universities with predominantly minority or female enrollments; • Create EEO apprenticeship programs; and/or • Request employment agencies to refer qualified minorities and women. 	<ul style="list-style-type: none"> • Include the phrase, for example, "Equal Opportunity/Affirmative Action Employer" in all printed employment advertisements;²⁵
Create diversity inclusion programs.	
Ensure that all employees are given equal opportunity for promotion by:	
<ul style="list-style-type: none"> • Posting promotion opportunities; • Creating and engaging with employee resource groups; • Offering career counseling to assist employees in identifying promotion opportunities, training and educational programs, and opportunities for job rotation or transfer; and/or 	<ul style="list-style-type: none"> • Evaluating job requirements for promotion.

²⁵ If the educational institution is also covered by Section 503 and VEVRAA, the tagline must also include (at a minimum) "disability" and "vet."

Defining an Applicant

An important element of a contractor's AAP is proper applicant tracking. All three laws have applicant data collection requirements in order for the contractor, as well as OFCCP, to correctly analyze hiring activity, goal progress, and compliance with outreach and recruitment obligations. Covered contractors are required to invite all applicants to self-identify their sex, race, ethnicity, disability status, and protected veteran status and to track those data. The understanding of what constitutes an applicant is therefore critical.

As a general rule, OFCCP applies the Uniform Guidelines on Employee Selection Procedures (UGESP)²⁶ which treats as an applicant a person who has indicated an interest in being considered for hiring, promotion, or other employment opportunities. This interest might be expressed by completing an application form or might be expressed orally, depending upon the employer's practice.

In addition, in recognition of the growing reliance on electronic application systems, OFCCP has published regulations on *internet applicant* recordkeeping,²⁷ which include the following definition of "Internet Applicant":

Internet Applicant means any individual as to whom the following four criteria are satisfied:

- (i) The individual submits an expression of interest in employment through the internet or related electronic data technologies;
- (ii) The contractor considers the individual for employment in a particular position;
- (iii) The individual's expression of interest indicates the individual possesses the basic qualifications for the position; and
- (iv) The individual at no point in the contractor's selection process before receiving an offer of employment from the contractor removes himself or herself from further consideration or otherwise indicates that he or she is no longer interested in the position.

Personnel Activity

As part of the Executive Order 11246 AAP, a contractor must provide information on personnel activity. Specifically, the AAP must identify, for each job group or job title, the gender, race, and ethnicity of applicants, hires, promotions, terminations, and other personnel actions. This information must include specifics on how the contractor defines promotions within its workforce. This is particularly critical for educational institutions given the unique personnel structure of instructional positions.

41 CFR 60-2.17(b)(2)

OFCCP recognizes that the academic environment involves positions that may have specialized applicant requirements. Ideally, the institution should address these in its AAP, but at a minimum should be prepared to discuss them with OFCCP and provide appropriate documentation where questions may arise regarding selection decisions.

²⁶ See Adoption of Questions and Answers to Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures, Question 15, 44 FR 11998 (March 3, 1979).

²⁷ Detailed information can be found on OFCCP's website at <https://www.dol.gov/ofccp/regs/compliance/faqs/iappfaqs.htm>.

Compensation Systems

Contractors must analyze their compensation systems to determine whether there are disparities based on sex, race, or ethnicity. This analysis is a required element of the AAP. Many educational institutions conduct a linear regression analysis of pay with key productivity variables in the model. The most thorough internal studies assess pay at a variety of aggregations. Initially, basic regressions should be conducted on rather broadly defined similarly-situated employee groupings to ensure adequate statistical power and identify any global disparities.²⁸ For example, since tenure-track instructors have similar job functions and duties, initial regression analysis can generally assess all tenure-track instructors as a similarly situated employee group. Further isolation of important determinates of pay can be achieved by including control variables in the regression analysis that capture productivity measures. Common control variables include rank, discipline, highest degree, and years of service (internal and external).

41 CFR 60-2.17(b)(3)

If other measures of productivity are included in the analysis, great caution should be exercised to ensure that the variables are objectively obtained and free of subjective bias. Productivity factors such as the quality of teaching, publications, research, and service to the community should be included in the regression analysis only when they can be objectively and neutrally measured.

²⁸ See Directive 2018-05, Analysis of Contractor Compensation Practices During a Compliance Evaluation Aug. 24, 2018, https://www.dol.gov/ofccp/regs/compliance/directives/dir2018_05.html.



What to Expect During a Compliance Evaluation

OFCCP follows standard procedures in all compliance evaluations of supply and service contractors. However, as described below, OFCCP recognizes that educational institutions are unique, particularly in their employment processes for instructional staff, and OFCCP takes into account these unique features during its compliance evaluations of educational institutions.

Hiring

As noted above, one of the aspects of an OFCCP compliance evaluation is the impact ratio analysis of applicants to hires for women and minorities. For those contractors subject to Section 503 and VEVRAA, OFCCP will also review available data to determine whether there is evidence of discrimination in the hiring of individuals with disabilities and protected veterans.

Where any hiring analyses reveal a potential adverse impact, OFCCP will conduct further investigation of the contractor's policies, procedures, and selection decisions. Therefore, it is important for a contractor to ensure that all policies and procedures are clear, well-documented, non-discriminatory, and consistently applied. OFCCP will review applicable selection policies and procedures, selection criteria, the applications and resumes of both selected and non-selected candidates, and any other documentation the institution provides as justification for its selection decisions. Additionally, OFCCP will interview hiring officials and others involved in the selection process.

OFCCP will conduct impact ratio analyses on the submitted data, comparing the selection rates for male versus female applicants and applicants by race and ethnicity, to determine if adverse impact exists. Adverse impact is defined as “[a] substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a race, sex, or ethnic group.” OFCCP generally considers differences in selection rates that are both practically and statistically significant to constitute an adverse impact. In order for these impact ratio analyses to be accurate, it is critical that the institution's submission address any specialized distinctions that might exist in relation to hires, promotions, and terminations for instructional staff. OFCCP will further investigate any statistically significant adverse impact against the classes protected under Executive Order 11246 during the compliance evaluation. OFCCP also encourages contractors to review and analyze any selection and compensation disparities on the basis of disability and veteran status, to ensure that systemic discrimination is not occurring on those bases.

41 CFR 60-3.16.B

Special Considerations for Instructional Staff

In the case of educational institutions, OFCCP recognizes that hiring processes are likely different for the various types of personnel. Any adverse impact investigation related to hires into instructional positions will begin with a careful review of any specialized criteria that may have played a part in the selection process. If the educational institution hires an employee on a one-to-one basis, the reason and all related information must be annotated in the AAP. Individuals selected for a tenure-track position may have to meet certain standards not applied to non-tenure track instructional positions. OFCCP will take all such elements into account during its review, provided that the institution can provide non-discriminatory justification and documentation to support its selections.

Promotions

OFCCP's evaluation of an educational institution's promotion practices will be adjusted to appropriately suit its various workforces. Promotions of non-tenure track instructional staff and non-instructional staff will be reviewed as in any other supply and service compliance evaluation. However, tenure promotions will require a careful assessment of the variables utilized by the institution. The sections that follow outline how OFCCP will review promotions of instructional staff and non-instructional staff, and prepare the institution for what to expect in the assessment of advancement activity during a compliance evaluation. The educational institution must provide a definition of "promotion" as used by the institution, including defining the pool of those considered for the promotion and the department and job from which and to which the person was promoted. If the definition varies for different segments of the workforce, the institution must define the term as used for each segment (e.g., instructional staff and non-instructional staff).

Instructional Staff

OFCCP recognizes that promotions of tenure track instructional staff may include elements that require special attention. The evaluation of tenure track instructional positions will begin with a review of the institution's tenure and rank requirements. As the criteria for tenure vary among institutions and may even vary among the various schools or colleges within the institution OFCCP will evaluate to what extent the institution relies on criteria such as teaching ability and effectiveness, experience, research and scholarship, professional services, services to the institution, governance, scholarly activity, publications, and others identified by the educational institution. OFCCP will also work with the institution to obtain any additional standards by which the institution decides rank promotions and tenure.

Analyses of promotions surrounding tenure will include both broad and detailed information provided by the educational institution. For instance, OFCCP will identify the process by which the contractor composes the departmental committees responsible for granting tenure and may obtain the historical data of the position. Utilizing the criteria established by the contractor, as outlined above, OFCCP may use multiple controls and variables in its analysis such as research, experience, teaching, number of publications, and other services to the institution while controlling for discipline and rank. OFCCP understands that there may not be concrete criteria on subjective variables such as the quality of publications. Nonetheless, it will evaluate the consistency by which any criteria are applied. For example, a publication may be weighted by the prestige of the source in which it appeared, but the prestige of that source would have to be applied uniformly in evaluating the quality of publications of all individuals considered for promotion.

Compensation issues are sometimes intertwined with promotion issues, and OFCCP will evaluate the two areas separately and together. For instance, if women are paid less than men in a department and analysis shows that women are not receiving tenure at the same rate as men, OFCCP would analyze both tenure outcomes and compensation. In cases in which OFCCP identifies delays in, or lack of, granting tenure based on a protected characteristic, OFCCP may obtain from the institution a list of its tenured instructional positions and the average time staff take to achieve tenure. OFCCP may request historical data on tenure appointments to determine variations among the protected categories and the rate at which staff progress through the ranks, including the event history to review the time lengths that each staff member received a promotion.

Rank is typically an important element of the instructional staff scale, determining performance, salaries, and proximity to promotion. In ascending order, academic ranks usually consist of assistant professors, associate professors, and professors (may include various levels such as professor emeritus or distinguished professors). Current rank is often viewed as a proxy for performance, and advancement in rank often indicates not only a salary adjustment but also a status adjustment. OFCCP will check for discrepancies in the time it takes to achieve promotion. Furthermore, if the time to promotion is longer for protected classes, OFCCP will investigate whether final tenure decisions may be influenced by that delay, and also consider the impact on lifetime earnings when analyzing the neutrality of compensation.

OFCCP will review the usual line of rank progression and the institution's written policies on the criteria used to advance rank. Such criteria may include:

1. Minimum number of years to be served at each level before being eligible for promotion to the next rank;
2. Date of each promotion;
3. Who determines rank promotions;
4. Years in current rank; and
5. Starting salary in each rank.

Although job titles may capture rank levels, OFCCP will work with the institution to analyze ranks and conduct qualitative and quantitative assessments in order to capture the promotion system accurately and correct any discriminatory practices or policies.

To determine whether the contractor has met its nondiscrimination and affirmative action obligations, OFCCP may request additional information to understand all the instructional staff promotion elements. Below are some of the questions that may come up during a compliance evaluation.

- What are the institution's promotion process guidelines?
- Who decides who is placed on tenure track and how?
- What is the composition of boards, tenure committees, or other bodies that determine promotions?
- What are the tenure requirements process, criteria, and timelines?
- Does the process vary by school, college, or department?
- Are the different ranks funded differently?
- What are the criteria for obtaining a tenure-track appointment?
- How many of the tenure-track candidates reach full tenure?
- Do performance appraisals impact promotions?

OFCCP understands that certain instructional positions, such as lecturers, researchers, and laboratory instructors, may not be tenured. The promotion assessment of these positions, along with all non-instructional staff, is described in the section below.

Non-Instructional Staff

The promotion analysis conducted by OFCCP of non-instructional staff will be analyzed the same as in any other service and supply compliance evaluation and follows the standard procedures.

OFCCP requests that for non-instructional staff, the educational institution provide for each job group or job title, the total number of promotions by sex, race, and ethnicity, and provide a pool of candidates from which the promotions were selected by sex, race, and ethnicity. OFCCP also requests that the educational institution include in its AAP its definition of “promotion” and the basis on which promotions took place, such as promotions internal to a specific job group or promotion to the job group. For review purposes, OFCCP assumes that all incumbents, whether or not they formally apply for promotion, are “eligible” and “qualified” for promotion. However, the educational institution should identify and explain promotions in the AAP narrative.

OFCCP determines the selection rate for promotions by dividing the number of individuals who were promoted by the number of qualified individuals who applied or were eligible for consideration to be promoted. If OFCCP identifies adverse impact based on sex, race, and/or ethnicity, it may request additional information from the educational institution (e.g., job postings, job descriptions, promotion policies, collective bargaining agreements).

To ensure that all employees are given equal opportunity for promotion, the educational institution should:

1. Post promotion opportunities;
2. Offer counseling to assist employees in identifying promotion opportunities, training and educational programs to enhance promotions and opportunities for job rotation or transfer; and
3. Evaluate job requirements for promotion.

At some educational institutions, tenure and ranks may apply to some non-instructional staff such as academic administrators (e.g., department heads, directors, or deans). In such cases, OFCCP will examine the institution’s policies to confirm that they are applied uniformly.

Terminations

Non-Instructional Staff

During compliance evaluations, educational institutions should expect an analysis of the terminations, resignations, and (if applicable) expirations of contracts for non-instructional staff. OFCCP will also analyze any reappointments and lines of progression, and will review files to ensure the educational institution’s criteria are applied without discrimination.

Instructional Staff: Non-Tenure Track

The non-tenure track instructional staff workforce is typically composed of non-tenure track faculty and part-time adjunct faculty assigned to the various colleges. For the most part, non-tenure staff will be assessed in a similar fashion as other professional staff at the institution. However, most work on a contractual basis, and their performance may determine whether they receive additional work. OFCCP will analyze the terminations, expiration of contracts, and renewal of contracts to ensure no discriminatory practices exist.

Instructional Staff: Tenure Track

Since progression toward tenure in academia has a profound consequence on continued employment and salary adjustments, OFCCP will examine the tenure process and the resulting terminations for neutrality. Educational institutions should ensure that they are relying on the most objective measures available in making termination decisions and document how those measures are being applied in a neutral fashion.

OFCCP will also examine any direct hiring into higher-rank positions (e.g., associate or full professor) to ensure that all individuals who are denied tenure are not being replaced for discriminatory reasons. The educational institution should ensure that its tenure track is applied without discrimination across the institution. In light of the low rates of women, minorities, and minority women in tenured positions, OFCCP will carefully examine the tenure criteria established by the educational institution.

Compensation

OFCCP's evaluation of an educational institution's compensation practices may be adjusted to appropriately suit its various workforces. Most institutions have separate pay systems for their different workforces, and OFCCP will conduct a separate compensation analysis for each one. Compensation analysis of non-instructional staff will be conducted in a similar fashion as other supply and service evaluations. However, compensation analysis of instructional staff may present issues that require special attention, such as accounting for the variety of schedules, pay combinations, structures, and disciplines within the institution.

The sections that follow describe how an educational institution can prepare to meet its obligations and what it can expect during the review of its compensation practices during a compliance evaluation for both non-instructional and instructional staff.

Non-Instructional Staff

Most types of non-instructional employees, such as those providing professional, administrative, service, and support functions, will be analyzed in the same manner as during any other supply and service evaluation conducted by OFCCP. Sometimes compensation of non-instructional staff depends on whether the position is permanent or temporary. OFCCP recognizes that educational institutions' compensation systems encompass a variety of pay systems that may require custom analysis. For example, compensation may be influenced by the source of funds, such as, state allocations, grants, contracts, or a combination of these sources. Educational institutions should describe the types of compensation systems and what factors are instrumental in assigning pay rates, such as functional area, exempt status, full-time status, and pay grades.

Instructional Staff: Non-Tenure Track

OFCCP recognizes that the composition of pay for non-tenured instructional staff may include elements that require special attention. One example is variation in schedules, which include part time, summer teaching, and adjunct teaching. Salary may also differ by school, college, department, discipline, and field of study. For example, lecturers in the natural sciences may have a higher salary than lecturers in the social sciences. Instructors also have the opportunity to earn more pay via summer teaching or research. Furthermore, there may be variations in the pay of unionized versus non-unionized staff. OFCCP will control for union status when it impacts base salary. In addition to base salary and bonuses, educational institutions may offer award systems to recognize and reward instructional staff.

Instructional Staff: Tenured/Tenure Track

Pay for tenure-track instructors may also depend on discipline and market, but they are typically evaluated on more criteria than non-tenure track staff. As with non-tenure track instructional staff, salary may differ by school, college, department, discipline, and field of study. The duties expected of tenure-track instructors may be broadly grouped into teaching, research, and service.

Tenure track instructional staff may also be able to earn more than their base salary through summer teaching, administrative work, or clinical loadings. OFCCP will assess both the accessibility and distribution of such ancillary payments for neutrality. Payment for additional responsibilities may be influenced by whether a staff member is on a 9-month or 12-month salary. Differences in the source of funding may also impact the compensation analysis. For instance, the contractor should identify research supplements, awards, and grants gained through additional efforts or exceptional talents.

OFCCP's evaluation of instructional staff compensation will include the total compensation package with all its components.²⁹ At the outset, OFCCP will determine what time periods (e.g., annual, 9-month, semester) are included in the reported compensation and will inquire how the institution adjusts for salary supplements, such as grants, when the institution conducts its own review of its pay practices, how it sets salaries, and makes salary adjustments.

In order to analyze the data and determine whether the contractor has met its obligations, OFCCP may obtain additional information to understand all the compensation elements.³⁰ Below are some of the questions that may come up during a compliance evaluation.

- How does the institution conduct its own compensation analysis?
- What and who determines the pay of professors, professional lecturers, instructors, and other teaching positions?
- Are all the instructional positions under the same pay system?
- How much do the following factors impact instructional staff compensation and how are they tracked: scholarly output, publications, field of study, speaking engagements, teaching evaluations, tenured/tenure-track/non-tenure track, national rankings of the institution and department, scholarship and research, service to the discipline, publications?
- What are the sources of funding for grants and how do they influence base salaries?
- What are the institution's rules on time-in-rank requirements before one is eligible to advance to the next rank?
- Do performance appraisals impact salary?
- What criteria are used to issue awards or honors that impact compensation?
- How do 9-month and 12-month contracts differ, and what determines their availability?
- How are administrative titles (Chair, Dean, etc.) selected, and how are the additional duties compensated (e.g., supplemental pay over and above teaching relief)?
- How does the termination of administrative duties impact pay?
- How are retention bonuses negotiated and reviewed for neutrality?
- How are tenure promotions reviewed for neutrality and by whom?
- Did the institution have a particular need or objective in recruiting and retaining a particular professor?

²⁹ OFCCP will further investigate any disparities in access to pay opportunities that involve additional or voluntary work options.

³⁰ See Directive 2018-08, Transparency in OFCCP Compliance Activities, Sept. 19, 2018, https://www.dol.gov/ofccp/regs/compliance/directives/dir2018_08.html

Compensation Analysis

The methods OFCCP uses to analyze compensation during a compliance evaluation depend on the specific compensation policies and structure of the contractor. However, some common themes and approaches are outlined in this section. Contractors must conduct compensation analyses annually and, if disparities based on sex, race, and/or ethnicity are found, must take measures to correct them.

Instructional Staff: Non-Tenure Track

Tenured and tenure-track employees are typically compensated differently than non-tenure track employees, and therefore OFCCP will analyze them separately from non-tenure track employees. Variations in schedules, salary funding, and services provided to the institution are some reasons for the separate analysis. During a compliance evaluation, the compensation of non-tenure track instructional staff will generally be analyzed in a similar fashion to that of non-instructional staff.

Instructional Staff: Tenured/Tenure Track

In addition to base salary and bonuses, educational institutions may offer honor and award systems to recognize and reward instructional staff. Instructional staff may also have the opportunity to receive additional compensation via summer teaching, administrative work, or clinical loadings. Both the accessibility and distribution of such ancillary payments should be examined for neutrality. Payment for additional non-teaching activities may be influenced by whether a staff member is on a 9-month or 12-month salary, and OFCCP's analysis will take into account what influences appointments to contracts with varying levels of work months.

Although multiple factors may influence instructional staff compensation at a particular institution, once similarly situated employee groups have been identified, the source of the funding of salaries becomes less relevant. If there is a mixture of funding sources within a workforce, it may be important to control for them through similarly situated employee groups or analytical controls. However, variations in the source of funding should not be a reason for pay disparities in base pay; educational institutions still have a duty to ensure non-discriminatory pay regardless of the funding source.

STATISTICAL ANALYSIS

The first process in the analysis of compensation is identifying the types of pay to be analyzed and standardizing the data across all instructional staff. Base salary should almost always be analyzed separately from other compensation. Other significant pay variables should be analyzed either separately or in addition to base pay as a total compensation analysis. OFCCP recommends that contractors, in analyzing compensation, annualize all salaries to a common yardstick. This is particularly important for educational institutions that have 9-month and 12-month salary contracts. In annualizing pay, it is preferable to separate any additional payments made to instructional staff for administrative, clinical, and ancillary teaching duties from actual pay to isolate an annual base pay figure. For example, if a tenure-track instructor who is department head is on a 12-month contract that provides additional compensation relative to a 9-month contract, the administrative stipend from their work as department head should be removed from the reporting of annual base pay. If the compensation components are accounted for properly, there will not be substantial differences in the annual base pay between tenure-track staff on a 9-month salary and those on 12-month salary. However, there may be differences in other non-base pay components and total compensation comparisons, which capture the additional job duties associated with the 12-month contract.

AGGREGATION FOR ANALYSIS — SIMILARLY-SITUATED EMPLOYEE GROUPS

After determining what types of pay are analyzable and standardizing those pay variables, OFCCP will form similarly-situated employee groups. The similarly-situated employee group should include employees (potentially from multiple job titles, job families, function, units, categories and/or job groups) who are comparable for purposes of the contractor's pay practices. OFCCP's compensation guidelines describe similarly situated jobs as "those who would be expected to be paid the same 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."³¹ In the educational sector, discipline may be another factor to consider.

Aggregation for compensation analysis may require employee groupings that differ from the AAP job groups to ensure that each similarly situated employee group is sizeable enough for statistical analysis. Although these groups may deviate from the AAP groupings, the addition of regression control variables allows for the isolation of pay influences among similarly situated workers. For example, whereas the AAP job group may be "assistant law professors," a regression of all tenure-track professors that controls for rank and discipline isolates the same pay influences.

The vast majority of educational institutions express to OFCCP that there is an expectation of all tenure-track instructors to contribute in the areas of teaching, research, and service, although the balance among the duties may differ with seniority. Therefore, it can be informative to assess all tenure-track instructors as a single analytical group while controlling for rank (i.e., assistant professor, associate professor, full professor) and broad discipline area (e.g., College of Liberal Arts, College of Law). Indeed, the most advanced pay equity studies conducted by universities explore various levels of aggregation in both the similarly situated employee groups and the control variables, however OFCCP will emulate Title VII aggregations in its enforcement.³² For example, regressions can be conducted on the pay of all "tenure-track" professors, or alternatively, on the pay of assistant, associate, and full professors individually.

The appropriate level of disciplinary control varies depending on the institution, but only discipline areas that have a substantial impact on determining instructional staff salaries should be used. The discipline area cannot be narrowly defined if there are not enough staff members' pay observations in the database. If the model is "over-specified" with detailed disciplinary controls, that model will not have sufficient explanatory power.³³ Reference to an institution's budgetary hierarchy might be helpful in determining where salaries tend to differ. If annual pay adjustments receive final approval from the college dean or provost, the college may be the appropriate level of disciplinary control. In some institutions, budgetary authority may be delegated to departments, making departments the appropriate disciplinary level. Institutions may also find it useful to refer to the Classification of Instructional Programs (CIP) developed by the U.S. National Center for Education Statistics, which aggregates academic departments into disciplinary categories that relate to subject matter and salaries.³⁴ The CIP codes have been used for many salary studies in academia.

³¹ See Directive 2018-05, Analysis of Contractor Compensation Practices During a Compliance Evaluation (Aug. 24, 2018), https://www.dol.gov/ofccp/regs/compliance/directives/dir2018_05.html.

³² 42 U.S.C. §§ 2000e *et seq.*

³³ Over-specified models have too many control variables relative to the number of observations (employees), which reduces the statistical power of the model.

³⁴ nces.ed.gov/ipeds/cipcode/Default.aspx?y=55.

In some cases, OFCCP will initially conduct a multiple regression analysis on a rather broadly defined similarly situated employee group to ensure adequate statistical power.³⁴ After this initial analysis, OFCCP will narrow the groups into subgroups (e.g., by college, school, or department), controlling for more variables to assess whether meaningful disparities exist. As explained above, since tenure-track instructors, for example, have similar job functions and duties, initial regression analysis can assess all tenure-track instructors as one similarly situated employee group. Further isolation of important determinates of pay will be achieved by including control variables in the regression that capture productivity measures. Common control variables include rank, discipline, highest degree, and years of service and experience.

Promotion

Tenure-track instructional staff compensation is inextricably related to the tenure promotion process. Given the persistent pattern of female representation rates declining at higher rates of tenure,³⁵ OFCCP will examine the neutrality of the tenure promotion process.

ACADEMIC YEAR	% MALE FULL PROFESSOR	% FEMALE FULL PROFESSOR	% MALE ASSOCIATE PROFESSOR	% FEMALE ASSOCIATE PROFESSOR	% MALE ASSISTANT PROFESSOR	% FEMALE ASSISTANT PROFESSOR
2008-09	78.5	21.5	61.8	38.2	54.5	45.5
2009-10	78	22	61.3	38.7	54	46
2010-11	77.4	22.6	60.8	39.2	53.5	46.5
2011-12	76.9	23.1	60.3	39.7	53.1	46.9
2012-13	76.4	23.6	59.8	40.2	52.7	47.3
2013-14	75.6	24.4	59.2	40.8	52.7	47.3
2014-15	75.1	24.9	58.5	41.5	52.8	47.2

Educational institutions are required to assess the outcomes of tenure selections for a disparate impact by gender, race, or ethnicity. UGESP applies to tests and other selection procedures that are used as a basis for any employment decision, including tenure promotion decisions. Educational institutions must apply UGESP principles such as job-relatedness, accuracy of measurement, dependability of measurement, and freedom from bias in the validation of the selection procedures they use to make promotion decisions. Validation means 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. If an educational institution determines that its tenure selection process, or any other selection procedure it uses, has a disparate impact by gender, race, or ethnicity, the contractor must either eliminate it or justify its continued use by validating it according to the technical requirements of the UGESP.

³⁴ Statistical power refers to the likelihood that a study or test will detect an effect when there is an effect to be detected. If statistical power is high, the probability of making a Type II (false negative) error concluding there is no effect when, in fact, there is one goes down.

³⁵ Data obtained from Academe annual reports (2008-2014), based on Faculty Compensation Survey (<https://www.aaup.org/reports-publications/2014-15salarysurvey>).



BIASED VARIABLES

When accounting for factors that influence pay, the analysis should attempt to avoid biased variables. If a biased predictor variable is included in the salary model, then some of the influence that is actually attributable to gender, race, or ethnicity will instead show up as part of the biased variable estimate. Variables that might be subject to bias in the higher education sector are tenure promotions, appointments (endowed chairs and other titles), initial rank, initial salary, retention bonuses, and performance ratings. Since tenure promotions are interlaced with tenure-track instructional staff pay, it is important that selection procedures on tenure decisions that have an adverse impact based on gender, race, or ethnicity be validated like any other promotion process. If women are denied promotions in higher numbers than men (or considered later, or less frequently than men), there is a clear impact on current and future pay. Universities should assess the EEO outcomes of the tenure process and holistically analyze the impact it has on instructional staff compensation. In any given year, universities will be making decisions regarding promotion to associate and full professor, and these decisions should be assessed for disparate impact and, if necessary, validated like any other selection process. Likewise, if women or minorities are hired into the educational institution at lower ranks than men or non-minorities with similar qualifications, this could impart a bias to the variable of rank. If being appointed to provost, dean, assistant dean, department head, endowed chair, or other offices that affect salary is more prevalent for men than for women or non-minorities than for minorities, those appointments should be suspected as possessing bias and further investigated. Inclusion of initial salary as a control variable should also be scrutinized as there may be bias against women or minorities in starting salaries.

Religious Exemption

OFCCP's regulations expressly provide that religiously oriented church-related colleges and universities are permitted to hire and employ employees of a particular religion. Therefore, it is not a violation of the Executive Order 11246 equal opportunity clause for an educational institution to hire and employ employees of a particular religion if the institution is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such educational institution is directed toward the propagation of a particular religion.³⁷

41 CFR 60-1.5(a)(6)

³⁷ See Directive 2018-03, Executive Order 11246 § 204(c), religious exemption, Aug. 10, 2018, https://www.dol.gov/ofccp/regs/compliance/directives/dir2018_03.html

Additional Requirements

In addition to the areas covered above, educational institutions also have other obligations under OFCCP's laws and regulations. While some of these requirements are duplicated across all three laws, others are specific to each mandate.

Equal Opportunity Clause

All educational institutions subject to Executive Order 11246, regardless of contract amount or number of employees, are required to include the Executive Order 11246 equal opportunity (EO) clause in all subcontracts and purchase orders. The clause may be incorporated by reference rather than in its entirety.

41 CFR 60-1.4(a), 60-300.5(a), 60-741.5(a)

Similarly, educational institutions subject to Section 503 and VEVRAA, regardless of contract amount or number of employees, must include the EO clauses of these laws in all subcontracts and purchase orders. The clause may be incorporated by reference rather than cited in full; however, unlike the Executive Order 11246 clause, very specific language is prescribed by the regulations. So long as the regulations are cited and the prescribed language is used, set in bold text, these clauses may be incorporated together or separately, or even combined with the Executive Order 11246 EO clause. As an example, an educational institution subject to all three laws could include the following:

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, or national origin. 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.

The obligations of the EO clauses apply by operation of law even if the EO clauses are not included in the contract.

Record Retention

Educational institutions subject to any of the three laws have record retention requirements for personnel and employment records. Educational institutions with 150 or more employees and a government contract of at least \$150,000 must maintain such records for two years from the date the record was created or the personnel action was taken, whichever is later. Educational institutions with fewer than 150 employees, and educational institutions that do not have a government contract of \$150,000 or more, need to maintain such records for only one year.

41 CFR 60-1.12, 60.300.80, 60-741.80

Educational institutions subject to Section 503 and VEVRAA have additional obligations to retain certain records for three years. Records that must be maintained for three years include documentation of the VEVRAA hiring benchmark and method used to set the benchmark; documentation of the external dissemination of the EEO policy and of the outreach and positive recruitment activities under Section 503 and VEVRAA; and the applicant, hire, and employment opening data collected for the Section 503 and VEVRAA data collection analyses.

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 the 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 (or, where appropriate, from Internet Applicants as defined in 41 CFR 60-1.3). The invitation should state that the submission of such information is voluntary.
- Once a contractor determines when to invite applicants to provide demographic data, all applicants must be given 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.

Contractors covered by Section 503 and VEVRAA must invite each applicant (or, where appropriate, each Internet Applicant as defined in 41 CFR 60-1.3) to identify whether they are a protected veteran or an individual with a disability. 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 data collection analyses and evaluations of the effectiveness of outreach and recruitment efforts.

OFCCP's regulations require contractors to make these invitations completely voluntary. The contractor must not use a refusal to self-identify as the basis for adverse treatment. To be in compliance, contractors need to 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 and it should not be available to anyone involved in making selection decisions. This information should be used only to conduct the Section 503 and VEVRAA analyses required by OFCCP.

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 all the different phases listed below. Contractors must also apply the 7% nationwide utilization goal to each of their job groups, or their entire workforce if the contractor has 100 or fewer employees.

- Contractors must offer it to each applicant (or, where appropriate, to each Internet Applicant as defined in 41 CFR 60-1.3) 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). Contractors are allowed to make non-substantive changes to the form, such as changing the color or adjusting the borders. However, since Form CC-305 is approved by the Office of Management and Budget (OMB), contractors are not allowed to change the content of the form.³⁸

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 either establish a benchmark equal to the national percentage of veterans in the civilian labor force or their own benchmarks, as described above.

- Contractors must offer it to each applicant (or, where appropriate, to each Internet Applicant as defined in 41 CFR 60-1.3) 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.

Even though there is not a prescribed form, invitations to identify as a protected veteran must contain the following components.

- A statement that the institution 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 on a voluntary basis.
- 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.
- A statement that the information will not be used in a manner inconsistent with VEVRAA.

³⁸ Form CC-305 is available on OFCCP's website at https://www.dol.gov/ofccp/regs/compliance/sec503/Self_ID_Forms/SelfIDForms.htm.

OFCCP provides an acceptable form for the invitation to self-identify in Appendix D of this TAG. The version in this TAG 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 it may have developed 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 it may have developed 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.

Designation of Responsibility and Policy Statement

The head of the educational institution is responsible for the implementation of its AAP and will designate an official to carry out the institution's AAP implementation and EEO commitments. The responsible official's duties should be included in the AAP(s). The responsible official's identity should appear on all internal and external communications regarding the AAP, including the EEO policy statement discussed below. This official must be given top management support and sufficient staff to manage the implementation of the program. He or she is responsible for reviewing and updating the institution's AAP(s) annually.

The educational institution must develop an EEO policy statement, a written document, usually in the form of a one- or two-page letter or memo addressed to employees and applicants that explains the equal employment opportunity expectations of the institution. 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. The contractor's commitment to providing reasonable accommodations for qualified individuals with disabilities should be a part of the Section 503 and VEVRAA EEO policies. The EEO policy must be posted in an area accessible to both applicants and employees.

EEO and Pay Transparency Postings and Notices³⁹

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, as well as procedures for filing complaints. The institution’s federal agency contracting officer should provide the necessary posters. They are also available in different formats on the [OFCCP website](#) and upon request from [local OFCCP offices](#). These notices must be provided in an accessible format for individuals with disabilities.

“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 institution’s intranet or emailed to employees) is acceptable for employees who do not work at a physical location of the institution. If the institution has an electronic application process, it 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

To notify applicants and employees of their rights to discuss, disclose, and inquire about compensation and compensation information, OFCCP also requires contractors to post the Pay Transparency Nondiscrimination Provision and include it in employee handbooks and manuals. 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, which includes the OFCCP logo and contact information, as well as an unformatted version for inclusion in employee handbooks and manuals.

Reasonable Accommodation

Contractors covered by Section 503 and VEVRAA must comply with reasonable accommodation requirements, both as a matter of nondiscrimination and as a matter of affirmative action. Contractors shall ensure that their personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees with known disabilities for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. Contractors shall ensure that their personnel processes do not stereotype individuals with disabilities in a manner which limits their access to all jobs for which they are qualified. In addition, contractors shall ensure that applicants and employees with

41 CFR 60-741.44(b)

³⁹ Additionally, Executive Order 13496 requires that covered contractors and subcontractors provide notice to their employees of their rights under the National Labor Relations Act (NLRA). The required notice may be found in Appendix A to 29 CFR part 471 subpart A. Other federal or state laws may require other postings. under other federal or state laws.

disabilities have equal access to their personnel processes, including those implemented through information and communication technologies. Contractors are required to provide necessary reasonable accommodation to ensure applicants and employees with disabilities receive equal opportunity in the operation of personnel processes. Contractors are also encouraged to make their information and communication technologies accessible, even absent a specific request for reasonable accommodation.⁴⁰

Contractors shall periodically review such processes and make any necessary modifications to ensure that these obligations are carried out. A description of the review and any necessary modifications to personnel processes or development of new processes shall be included in the written AAP. The contractor must design procedures that facilitate a review of the implementation of this requirement by the contractor and the government.

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 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 relates to the disability.

⁴⁰ Contractors are encouraged to make their information and communication technology accessible. There are a variety of resources that may assist contractors in assessing and ensuring the accessibility of their information and communication technology. These include the Web Content Accessibility Guidelines (WCAG 2.0) of the World Wide Web Consortium Web Accessibility Initiative, online at www.w3.org/WAI/intro/wcag.php, and the regulations implementing the accessibility requirements for federal agencies prescribed in section 508 of the Rehabilitation Act. Information on section 508 may be found online at www.section508.gov/index.cfm. This website also provides information about various state accessibility requirements and initiatives.

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 disabled veteran to perform the essential functions of that position.
- Modifications or adjustments that enable the contractor's 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.
- 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.

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.

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.

OFCCP believes that contractors that engage in various disability and inclusion programs and provide reasonable accommodations will be more likely to comply with their regulatory requirements and meet the 7% utilization goal.

OFCCP's regulations at [41 CFR Part 60-741, Appendix B](#) contain best practices for developing reasonable accommodation procedures.

Specialty Areas

Regardless of the type of educational institution selected for a compliance evaluation (e.g., medical school, law school, general university), the same OFCCP regulations and guidelines apply. However, OFCCP recognizes that academia may involve specialized situations and will make every effort to account for such unique circumstances during its evaluations. The following discussion covers three of the most common specialty areas.

Athletics

Since many athletics programs are small relative to the other workforces at an institution, statistical analysis of hiring and pay is often difficult. When necessary, OFCCP will conduct cohort analyses of pay and selections, such as hiring and terminations.

Within athletics, it is important that the AAP address who is responsible for hiring employees and setting their salaries. For example, at some institutions, all of the responsibility falls on the athletic director, but at others, the head coach has the authority to hire and set salary (where an assistant or associate head coach is being hired) or a committee of coaches has the authority (if hiring a head coach). Therefore, the delegation of responsibility could play a factor in salary discrepancies.

OFCCP understands that many specialized factors affect compensation and promotion opportunities for coaches and athletic directors. For instance, the market can be an important factor, and some sports derive significant revenue from conference sources. Therefore, the institution's AAP should address any relevant explanatory factors, such as the ones listed below.

- Existence of written contracts designating job responsibilities and salaries. The contents of these contracts are important as they could indicate other monetary amounts not included in the base salary, such as speaking fees, car allowances, country club memberships, travel expenses, etc. For example, the contractor could state the head coach of basketball makes \$400,000 annually, when in fact, their contract awards them money for appearances and conducting summer camps, as well as bonuses for winning certain levels of tournament play. This would result in a much higher total salary.
- The level of managerial responsibility culminating in performance reviews and merit increases. For example, the head coach conducts performance reviews and awards merit increases to the associate/assistant coaches while a committee has the same responsibility for the head coaches. Alternatively, the athletic director could bear all responsibility based on recommendations from coaches.
- Whether the physical size of the program plays a role in compensation. For example, one head coach is monitoring 50 athletes plus 5 assistant coaches, while another head coach is monitoring 4 athletes and 1 assistant coach. The size of the program may increase responsibility and therefore increase compensation.
- Whether revenue production or a “reputation” affects compensation levels of coaches and directors. OFCCP recognizes that some sports programs have a long-standing history of success which results in a higher salary and/or bonuses for those coaches. For example, they may bring in significant revenue through ticket sales and broadcast agreements. Some programs may not generate net revenue, but they bring publicity to the educational institution.

Medical

The budgets, coursework, and research of educational institutions are increasingly connected to medical care and research facilities. OFCCP realizes that medical universities, teaching hospitals, and other medical-centered educational institutions employ individuals with highly specialized skill sets. OFCCP also realizes that discipline is an important factor influencing pay in the medical industry. However, contractors should be cognizant of OFCCP's analytical requirement of sufficient sample size when formulating their AAP job groups. It is particularly helpful in the analysis of compensation if pay categories and work efforts (e.g. hours or full-time equivalents) can be identified in the database by major work areas, such as teaching, clinical, or research duties.

The AAP should clearly identify the organizational structure and job groupings covering both instructional and non-instructional staff, as well as any practicing medical staff, as appropriate. Where the institution includes a teaching hospital or other affiliated medical facility, it should also clearly identify whether the staff of that facility are included in the institution's AAP or are under a standalone AAP.

OFCCP recognizes that the instructional staff at a medical-centered educational institution are highly skilled and there are specific factors that affect selection decisions and compensation. Therefore, thorough documentation and recordkeeping regarding those factors are critical. The AAP availability and utilization analyses for such positions should clearly reflect the institution's recruitment and placement practices as well as its workforce composition, and the institution should include information on any specialized or unique elements relevant to these analyses.

Online Institutions

With the increasing evolution of technology, there has been a marked increase in educational institutions that function partially, or even entirely, as online schools. OFCCP recognizes that such institutions can involve unique staffing situations. The majority of the instructional staff may not be full-time employees of the institution. The institution should ensure that its AAP addresses explanatory factors, such as the ones listed below.

- Provides a clear picture of the organizational structure and definitions, as appropriate, for all instructional staff; for example, some online institutions use terms such as *faculty*, *core faculty*, and *contributing faculty* to differentiate among types and levels of instructional staff.
- Details recruitment and selection procedures for all staff, with specific emphasis on the instructional positions defined in the organizational profile and job group analysis.
- Details all relevant compensation factors, especially for the instructional positions; for example, compensation may be affected by the number of courses covered in a term or academic year, and/or the level of course covered (e.g., bachelor, master, doctoral).
- The actual locations of remote and telework employees must be annotated in the organizational profile and job group analysis of the AAP in which they are included. For employees who work from home, the annotation should identify only the city and state (or country).

When an online institution also has a “brick and mortar” side, it will also be important to clarify the connection between the physical institution and the online offerings. For example, the contractor should address whether the two segments are separate or under one AAP; whether the administration is shared or individual to each segment; and whether the recruitment, selection, and compensation procedures are shared or individual to each segment.



APPENDICES



List of Appendices

- A. Glossary of Terms
- B. Sample Organizational Profiles
- C. Determining Availability
- D. VEVRAA Self-ID Form Sample
- E. How to Conduct an Adverse Impact Analysis

Appendix A: Glossary of Terms

ACTION-ORIENTED PROGRAMS

Specific programs designed to correct any identified problem areas found during the contractor's in-depth analyses of its personnel practices, policies, and procedures. They should describe what action is to be taken, who is responsible for performing the action, and when the action will be accomplished. Proper execution of the program will likely remove the identified impediment to equal employment opportunity or otherwise increase the success of the affirmative action program in the identified problem area.

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

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, a 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) 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 also "Disparate Impact".

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.

APPLICANT

A person who has indicated an interest in being considered for hiring, promotion, or other employment opportunity. This interest might 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 he or she has indicated an interest in being considered for another job, promotion, or employment opportunity within the company. See Question and Answer 15 to 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."

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 pursuant to 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 60-4.3(a)1.d(iii), the category is called "Asian and Pacific Islander."

AVAILABILITY

As described in 41 CFR 60-2.14, an estimate of the number of qualified minorities or women available for employment in a given job group, expressed as a percentage of all qualified people available for employment in the given job group. The purpose of the availability determination is to establish a benchmark against which the demographic composition of the contractor's incumbent workforce can be compared in order to determine whether barriers to equal employment opportunity may exist within particular job groups.

BIASED VARIABLES

Biased variables that should be excluded from the compensation model. Variables that might be subject to bias in the higher education sector are tenure promotions, appointments (endowed chairs and other titles), initial rank, initial salary, retention bonuses, and performance ratings.

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 disparate impact cases, 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 requirement that causes 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 his or her disability. OFCCP uses Title VII, UGESP, and ADA standards, as appropriate, when evaluating a contractor's assertion of a business necessity defense.

COHORT ANALYSIS

A nonstatistical comparison of the treatment of similarly situated individuals, or small groups of applicants or employees.

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 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 in violation of 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, offsite 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

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.

CONCILIATION AGREEMENT

A binding written agreement between a contractor and OFCCP that details specific contractor commitments, actions or both to resolve the violations set forth in the agreement. See 41 CFR 60-1.33, 60-300.62, 60-741.62.

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.

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.

DISABILITY UTILIZATION ANALYSIS

OFCCP’s regulations prescribe a utilization goal of 7% for the employment of qualified individuals with disabilities for each job group in the contractor’s workforce; the 7% utilization goal may be applied to the entire workforce for contractors with 100 or fewer employees. When the percentage of individuals with disabilities is less than the 7% goal, contractors must take steps to determine whether and where impediments to equal employment opportunity exist.

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).

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

A theory of employment discrimination. 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.

EDUCATIONAL INSTITUTION

School, college, university, or other educational institution or institution of higher learning that is a federal contractor or subcontractor under the laws and regulations enforced by OFCCP.

EEO POLICY

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

EMPLOYEE

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 called *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 his or her work will typically be most important in the *Darden* analysis. The EEOC also relies on this test for Title VII and ADA purposes. For additional information, see the FAQs online at <https://www.dol.gov/ofccp/regs/compliance/faqs/EmpRelationship.html>.

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, 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 OPPORTUNITY CLAUSE (ALSO REFERRED TO AS THE EO 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 EO clauses outline contractors’ responsibilities under Executive Order 11246, Section 503, and VEVRAA. The applicable EO clauses are considered to be a part of every covered contract and subcontract whether or not they are physically 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:

1. In general. The term essential functions means 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.
2. A job function may be considered essential for any of several reasons, including, but not limited to, the following:
 - (i) The function may be essential because the reason the position exists is to perform that function;
 - (ii) 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
 - (iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise, or ability to perform the particular function.
3. Evidence of whether a particular function is essential includes, but is not limited to:
 - (i) The contractor’s judgment as to which functions are essential;
 - (ii) Written job descriptions prepared before advertising or interviewing applicants for the job;
 - (iii) The amount of time spent on the job performing the function;
 - (iv) The consequences of not requiring the incumbent to perform the function;
 - (v) The terms of a collective bargaining agreement;
 - (vi) The work experience of past incumbents in the job; and/or
 - (vii) 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).

ESTABLISHMENT

A facility or unit that produces goods or services, such as a factory, office, store or mine. In most instances, the unit is a physically separate facility at a single location. In appropriate circumstances, OFCCP may consider as an establishment several facilities located at the same site or two or more sites when the facilities are in the same labor market or recruiting area. The determination as to whether it is appropriate to group facilities as a single establishment will be made by OFCCP on a case-by-case basis.

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; and requires that they take affirmative action to ensure equal employment opportunity. Federal supply-and-service contractors and subcontractors with 50 or more employees and a contract of \$50,000 or more have additional affirmative action obligations, including the development of a written affirmative action program.

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.

GOALS FOR MINORITIES AND WOMEN (PLACEMENT GOALS)

Placement goals that contractors must establish 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 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 utilization analyses under Executive Order 11246. Contractors with 100 or fewer employees have the option of using their entire workforce instead of job groups. See 41 CFR 60-741.45.

HARASSMENT

Harassment is unwelcome conduct that is based on a protected characteristic (race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or 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). Harassment can take the form of 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.

HIRING BENCHMARK (VEVRAA)

As part of the VEVRAA AAP requirements, the contractor is responsible for setting an annual hiring benchmark that: 1) equals the national percentage of veterans in the civilian labor force or 2) is customized to take into account at least the five factors listed at 41 CFR 60-300.45(b)(2).

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.

INSTRUCTIONAL STAFF

Faculty members and others in a teaching capacity. May include Professors, Associate Professors, Assistant Professors, Instructors, Visiting Professors, Lecturers, Adjunct Faculty and others.

INTEGRATED POSTSECONDARY EDUCATION DATA SYSTEM (IPEDS)

This is a system of interrelated surveys conducted annually by the National Center for Education Statistics at the U.S. Department of Education. IPEDS is where educational institutions report workforce data.

INTERNET APPLICANT

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

- (i) The individual submits an expression of interest in employment through the internet or related electronic data technologies;
- (ii) The contractor considers the individual for employment in a particular position;
- (iii) The individual's expression of interest indicates the individual possesses the basic qualifications for the position; and,
- (iv) The individual, at no point in the contractor's selection process before receiving an offer of employment from the contractor, removes him or herself from further consideration or otherwise indicates that he or she is 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 sex, race, 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 per 41 CFR 60-300.42 and 60-741.42.

JOB GROUP

A group of jobs having similar content, wage rates, and opportunities. If a contractor has a total workforce of fewer than 150 employees, it may use the EEO-1 categories as its job groups. See 41 CFR 60-2.12.

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 60-4.3(a)1.d(iii), Pacific Islanders are combined with Asians. See "Asian (not Hispanic or Latino)."

NON-INSTRUCTIONAL STAFF POSITIONS

All employees at the educational institution who are not in a teaching capacity. Includes executive and administrative positions, professional, technical, clerical, and others.

ORGANIZATIONAL DISPLAY

An organizational display must identify each organizational unit in the establishment and show the relationship of each organizational unit to the other organizational units in the establishment. For each organizational unit, the organizational display must indicate the following:

- The name of the unit;
- The job title, gender, race, and ethnicity of the unit supervisor;
- The total number of male and female employees in the unit; and
- The total number of male and female employees in each of the following groups: Black, Hispanic, Asian/Pacific Islander, and American Indian/Alaskan Native.⁴¹

ORGANIZATIONAL PROFILE

An organizational profile depicts a contractor's staffing pattern. OFCCP allows contractors to disclose this data in the form of an organizational display or a workforce analysis. The format used to communicate the data is solely at the discretion of the contractor.

ORGANIZATIONAL UNIT

A department, division, branch, section, or other organizational entity of a contractor that operates as a single unit under a common head.

⁴¹ OFCCP will also accept AAPs and supporting records that reflect the following revised EEO-1 race and ethnicity categories: 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), and Two or More Races (Not Hispanic or Latino).

PAY TRANSPARENCY

Employees' rights to discuss, disclose, and inquire about compensation and compensation information. OFCCP also requires contractors to post the Pay Transparency Nondiscrimination Provision and include it in employee handbooks and manuals. The posting requirement may be accomplished by posting the provision electronically or by posting copies of the provision in conspicuous places available for employees and applicants.

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; or increase in pay, requiring greater skill or responsibility; or the opportunity to attain such. A promotion may be either competitive or non-competitive.

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 can perform the essential functions of such position with or without reasonable accommodation. 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.

RANK

Rank is typically an important element of the instructional staff scale, determining salaries and proximity to a promotion, and it is often viewed as a proxy for performance. In ascending order, academic ranks usually consist of assistant professors, associate professors, and professors (may include various levels such as professor emeritus or distinguished professors).

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:

- (i) To a job application process that enables a qualified applicant with a disability to be considered for the position such applicant desires;
- (ii) 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
- (iii) That enable 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).

RECORDS RETENTION

The amount of time covered contractors are required to retain personnel and employment records. Contractors with 150 or more employees and a government contract of at least \$150,000 must maintain such records for two years from the date the record was created or the personnel action was taken, whichever is later. Contractors with fewer than 150 employees and contractors that do not have a government contract of \$150,000 or more need maintain such records for only one year. Contractors subject to Section 503 and VEVRAA have additional obligations to retain certain records for three years.

RECRUITMENT SOURCE

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

REGRESSION ANALYSIS

A statistical analysis used to evaluate the interrelated effects of independent variables (such as education, prior experience) on a dependent variable (such as hire, compensation). Regression analyses frequently are a significant element of OFCCP’s proof in systemic discrimination cases.

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 the 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).”

RETALIATION

Any adverse action by a contractor against an applicant or employee because he or she:

- Filed a complaint of discrimination;
- Opposed any act made unlawful under any of the laws enforced by OFCCP;
- Assisted or participated in an investigation, compliance evaluation, hearing or any other activity related to the administration or enforcement of any of the laws enforced by OFCCP; or
- Exercised any other rights under OFCCP's laws or any other federal, state or local law requiring equal opportunity.

Adverse actions include employment actions such as termination, demotion or failure to hire. Other actions that are likely to deter a reasonable person from pursuing their rights, including threats and unjustified negative evaluations or references, may also be adverse actions.

SEARCH COMMITTEE

A group of faculty from an educational institution whose collective job is to:

- Recruit a broad group of candidates for instructional positions;
- Evaluate the candidates fairly; and
- Select the best candidate for the position.

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, including 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.

SIMILARLY-SITUATED EMPLOYEE GROUP

For purposes of compensation analyses, a group of employees who would be expected to be paid the same 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.

STUDENT WORKER

A student, undergraduate or graduate, engaged in research, teaching, work-study, or another related or comparable position at an educational institution. The individual's primary relationship with the institution is educational, and the student's working relationship with the educational institution has been obtained as a result of or in conjunction with his or her studies.

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):

- 1) 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
- 2) 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).

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.

SUPPLY AND SERVICE

Any covered contractor in business with the federal government that provides goods and/or services; excludes construction.

UNDERUTILIZATION (Executive Order 11246)

When the percentage of minorities or women employed in a particular job group is less than would be reasonably expected given their availability percentage in the relevant labor pool. See 41 CFR 60-2.10(a)(1), 60-2.14, 60-2.15.

UTILIZATION GOAL

See "Goals for qualified individuals with disabilities."

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, including the development of a written affirmative action program.

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.

WORKFORCE ANALYSIS

A listing of all job titles, ranked from the lowest-paid to the highest-paid within each organizational unit, including unit supervision. The workforce analysis must include information by job title, wage rate, department and/or organizational unit, and lines of progression. For each job title, the workforce analysis must list the following:

- The total number of employees;
- The total number of male and female employees;
- The total number of male and female employees in each of the following groups: Black, Hispanic, Asian/Pacific Islander, and American Indian/Alaskan Native;⁴² and
- The wage rate or salary range.

⁴² OFCCP will also accept AAPs and supporting records that reflect the following revised EEO-1 race and ethnicity categories: 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), and Two or More Races (Not Hispanic or Latino).

Appendix B: Sample Organizational Profiles

SAMPLE 1

Department: Academic Affairs

Job Title	EEO	Salary ⁴³	Total Emps	Total Min	Gender						
Admin Support Associate	D40	\$34,277	1	1	Male	0	0	0	0	0	0
					Female	1	0	0	1	0	0
Admin Support Specialist	D39	\$36,734	1	1	Male	0	0	0	0	0	0
					Female	1	0	1	0	0	0
Admin Support Associate—SR	D31	\$38,734	1	1	Male	0	0	0	0	0	0
					Female	1	1	0	0	0	0
Executive Assistant	D25	\$42,377	1	0	Male	1	1	0	0	0	0
					Female	0	0	0	0	0	0
Social Research Assistant	D25	\$46,000	1	0	Male	1	1	0	0	0	0
					Female	0	0	0	0	0	0
Technology Support Analyst	D40	\$59,000	1	0	Male	1	1	0	0	0	0
					Female	0	0	0	0	0	0
Public Communication Specialist	D25	\$61,250	1	1	Male	0	0	0	0	0	0
					Female	1	0	0	0	0	0
Accountant	D30	\$64,750	1	0	Male	0	0	0	0	0	0
					Female	1	1	0	1	0	0
Business Officer	D30	\$77,000	1	1	Male	1	0	1	0	0	0
					Female	0	0	0	0	0	0
Assistant Provost	D1	\$115,090	1	0	Male	1	1	0	0	0	0
					Female	0	0	0	0	0	0
Associate Provost	D1	\$124,277	1	1	Male	0	0	0	0	0	0
					Female	1	0	1	0	0	0
Senior Associate Provost	D1	\$225,177	1	0	Male	1	1	0	0	0	0
					Female	0	0	0	0	0	0
Provost & Chancellor	D1	\$315,877	1	0	Male	1	1	0	0	0	0
					Female	0	0	0	0	0	0
TOTALS			13	6	Male % of Total	7	6	1	0	0	0
				46	Female % of Total	6	2	2	2	0	0

⁴³ Wage information could be arrayed: codes, ranges, midpoint, actual salaries, or averages. If the contractor uses codes, a key to the code must be provided. If the contractor uses ranges or midpoints, a range array must be provided indicating a minimum, mid, and maximum for the ranges.

SAMPLE 2

Alumni Affairs and Developments

Job Code & Title	Salary Range & EEO Code				Tot	W	B	A	H	I	P	2
11524	\$65,933.00-65,933.00	Total	1	Mal	0	0	0	0	0	0	0	0
Development Support Ofcr II	3	Total Min	0	Fem	1	1	0	0	0	0	0	0
10035	\$85,007.00-85,007.00	Total	1	Mal	0	0	0	0	0	0	0	0
Alumni Engagement Ofcr III	3	Total Min	0	Fem	1	1	0	0	0	0	0	0
11525	\$124,481.00-124,481.00	Total	1	Mal	0	0	0	0	0	0	0	0
Development Support Ofcr III	3	Total Min	0	Fem	1	1	0	0	0	0	0	0
A11152	\$200,624.00-277,995.00	Total	2	Mal	2	2	0	0	0	0	0	0
Assoc Vice President	1	Total Min	0	Fem	0	0	0	0	0	0	0	0
11402	\$350,000.00-350,000.00	Total	1	Mal	1	1	0	0	0	0	0	0
Senior Assoc Vice President	1	Total Min	0	Fem	0	0	0	0	0	0	0	0
Total for AAD		Total	6	Mal	3	3	0	0	0	0	0	0
		Total Min	0	Fem	3	3	0	0	0	0	0	0

Admissions and Financial Aid

Job Code & Title	Salary Range & EEO Code				Tot	W	B	A	H	I	P	2
11633	\$42,619.19-42,619.19	Total	1	Mal	0	0	0	0	0	0	0	0
Student Services Asst III	4	Total Min	0	Fem	1	1	0	0	0	0	0	0
10162	\$45,510.40-45,510.40	Total	1	Mal	0	0	0	0	0	0	0	0
Computer Prod Control III	5	Total Min	0	Fem	1	1	0	0	0	0	0	0
10016	\$46,384.00-61,152.00	Total	1	Mal	0	0	0	0	0	0	0	0
Administrative Asst IV	4	Total Min	0	Fem	1	1	0	0	0	0	0	0
11337	\$48,500.00-50,718.00	Total	3	Mal	2	1	0	0	0	0	0	0
Financial Aid Associate I	4	Total Min	1	Fem	1	1	0	0	0	0	0	0
11344	\$50,128.00-61,339.19	Total	4	Mal	0	0	0	0	0	0	0	0
Student Services Asst IV	4	Total Min	0	Fem	4	4	0	0	0	0	0	0
11325	\$53,885.00-66,300	Total	8		3	3	0	0	0	0	0	0
Financial Aid Associate II	3	Total Min	0		5	5	0	0	0	0	0	0
Total for AFA		Total	18	Mal	5	4	0	0	1	0	0	0
		Total Min	1	Fem	13	13	0	0	0	0	0	0

SAMPLE 3

Department Business School — Accounting Department Total Employees #
 Job Title 13X-07-Clerk IV Code D

	White	Black	Hispanic	Asian	Amer Indian	Pac Islander	Two or More	Total
Female	#	#	#	#	#	#	#	#
Pct	#	#	#	#	#	#	#	#
Male	#	#	#	#	#	#	#	#
Pct	#	#	#	#	#	#	#	#

Minority Employees: # (#%) Job Title Employees #

Job Title 90251 — Senior Leader Code J

	White	Black	Hispanic	Asian	Amer Indian	Pac Islander	Two or More	Total
Female	#	#	#	#	#	#	#	#
Pct	#	#	#	#	#	#	#	#
Male	#	#	#	#	#	#	#	#
Pct	#	#	#	#	#	#	#	#

Minority Employees: # (#%) Job Title Employees #

Job Title 90260 — Senior Lecturer II Code L

	White	Black	Hispanic	Asian	Amer Indian	Pac Islander	Two or More	Total
Female	#	#	#	#	#	#	#	#
Pct	#	#	#	#	#	#	#	#
Male	#	#	#	#	#	#	#	#
Pct	#	#	#	#	#	#	#	#

Minority Employees: # (#%) Job Title Employees #

APPENDICES | TECHNICAL ASSISTANCE GUIDE | EDUCATIONAL INSTITUTIONS | 65

Job Title	90028 – Associate Professor							Code	Q
Female	White	Black	Hispanic	Asian	Amer Indian	Pac Islander	Two or More	Total	
	#	#	#	#	#	#	#	#	
	Pct	#	#	#	#	#	#	#	
Male	#	#	#	#	#	#	#	#	
	Pct	#	#	#	#	#	#	#	
Minority Employees: # (##)						Job Title Employees			#

Job Title	90T87 – Visiting Associate Professor							Code	R
Female	White	Black	Hispanic	Asian	Amer Indian	Pac Islander	Two or More	Total	
	#	#	#	#	#	#	#	#	
	Pct	#	#	#	#	#	#	#	
Male	#	#	#	#	#	#	#	#	
	Pct	#	#	#	#	#	#	#	
Minority Employees: # (#%)					Job Title Employees				#

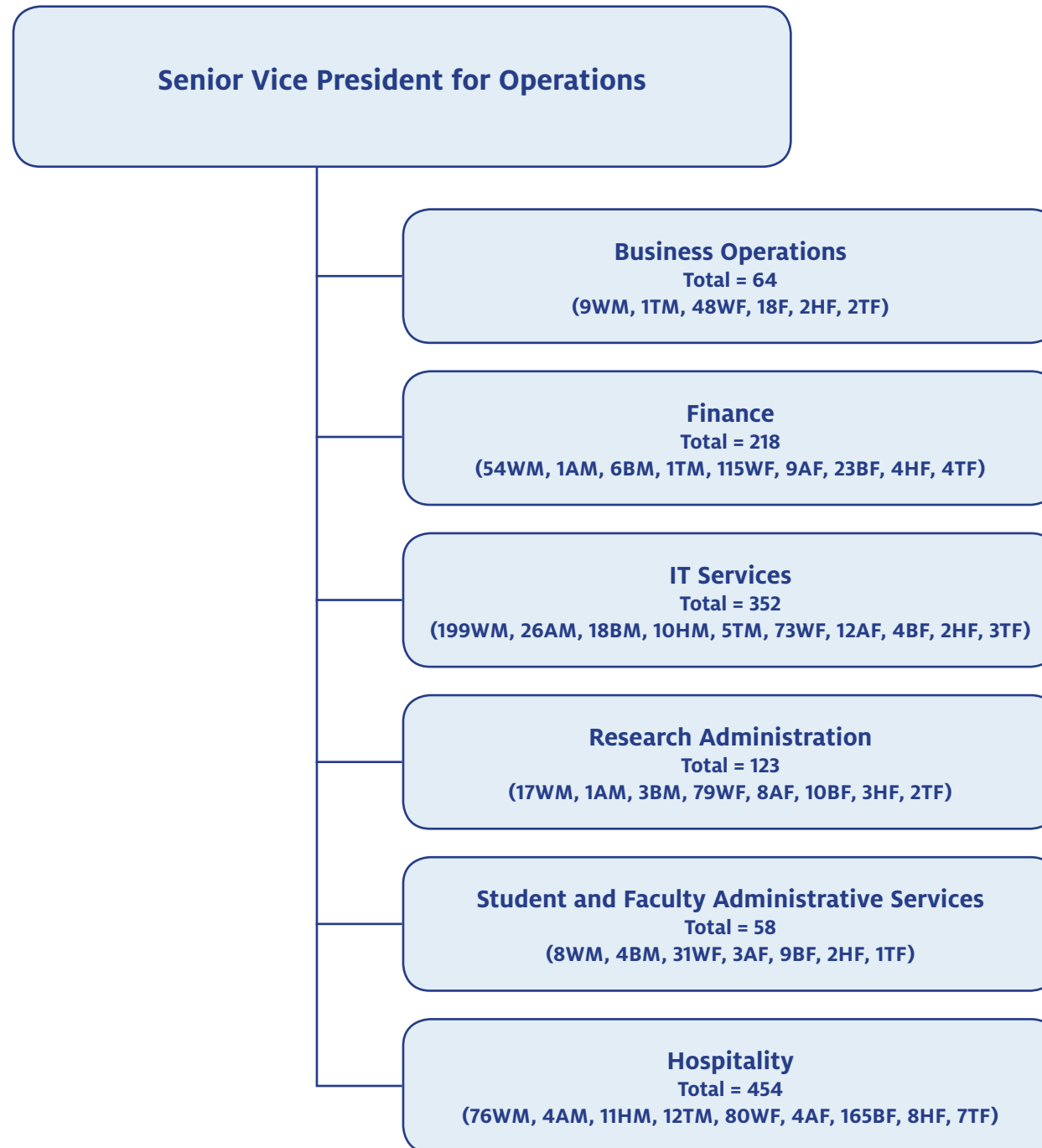
SAMPLE 3, continued

Job Title		90014 – Assistant Professor							Code	T
Female		White	Black	Hispanic	Asian	Amer Indian	Pac Islander	Two or More	Total	
		#	#	#	#	#	#	#	#	
	Pct	#	#	#	#	#	#	#	#	
Male		#	#	#	#	#	#	#	#	
	Pct	#	#	#	#	#	#	#	#	
Minority Employees: # (#%)									Job Title Employees	#

Job Title		990077 – Professor							Code	U
Female		White	Black	Hispanic	Asian	Amer Indian	Pac Islander	Two or More	Total	
		#	#	#	#	#	#	#	#	
	Pct	#	#	#	#	#	#	#	#	
Male		#	#	#	#	#	#	#	#	
	Pct	#	#	#	#	#	#	#	#	
Minority Employees: # (#%)									Job Title Employees	#

Job Title		90034 – Department Chairman							Code	U
Female		White	Black	Hispanic	Asian	Amer Indian	Pac Islander	Two or More	Total	
		#	#	#	#	#	#	#	#	
	Pct	#	#	#	#	#	#	#	#	
Male		#	#	#	#	#	#	#	#	
	Pct	#	#	#	#	#	#	#	#	
Minority Employees: # (#%)									Job Title Employees	#

SAMPLE 4



Appendix C: Determining Availability

In determining availability for instructional staff job groups, the educational institution should use the most recent statistics available and may rely on data from possible sources such as the following, as appropriate and applicable:

- Integrated Postsecondary Education Data System (IPEDS) on doctoral recipients. In addition, IPEDS provides information on master and bachelor recipients.
- National Organization for Research at the University of Chicago (NORC) Survey of Earned Doctorates sponsored National Science Foundation (NSF) Survey of Doctoral Recipients.

The following organizations and sources provide data on specific areas of expertise that the educational institution may use, as appropriate, in determining availability estimates.

- Current instructional staff in United States schools of medicine from the Association of American Medical Colleges (AAMC).
- Current instructional staff teaching microbiology in United States medical schools from the AAMC.
- American Association of Colleges of Nursing (AACN) on graduates of doctoral programs and for full-time instructional staff in U.S. schools of nursing (both members and non-members of AACN).
- Current tenure-track instructional staff in United States dental schools from the American Dental Association.
- Data collected by the American Bar Association on women and minority instructional staff in U.S. schools of law.
- Current professional staff in United States university research libraries from the Association of Research Libraries.
- Data in the Association to Advance Collegiate Schools of Business (AACSB).
- For coaches and trainers, information may be found in the NCAA Race and Gender Demographics Report.
- “Faculty Profile,” Association of American Universities Data Exchange (AAUDE), <http://aaude.org/>. Restricted to Associations of American Universities (AAU) institutions that participate in the exchange of data/information to support decision-making at their institution.
- National Science Foundation, National Center for Science and Engineering Statistics, Doctorate Recipients from U.S. Universities, Special Report NSF 13-301.
- Association of American Medical Colleges, AAMC Faculty Roster Snapshot, U.S. Medical School Faculty, Table 19: Distribution of Full-time U.S. Medical School Faculty by Sex, Race/Hispanic Origin, Degree, and Department, <https://www.aamc.org/data-reports/faculty-institutions/faculty-roster>.
- Enrollments and Graduations in Baccalaureate and Graduate Programs in Nursing, American Association of Colleges of Nursing, Tables 9 and 10.
- U.S. Census Bureau, 2006-2010 American Community Survey, various geographies, 2012.
- Shaneka Morris, ARL Annual Salary Survey 2015–2016, Washington, DC: Association of Research Libraries.
- State community college system data.

Appendix D: VEVRAA Self-ID Form Sample

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.

- ☐ I IDENTIFY AS ONE OR MORE OF THE CLASSIFICATIONS OF PROTECTED VETERAN LISTED ABOVE
- ☐ 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) "Recently separated veteran" means any veteran during the three years 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) "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) "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 under Executive Order 12985.

Appendix E: How to Conduct an Adverse 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. See 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 an adverse impact. See 41 CFR 60-3.15A(2). The adverse impact determinations must be conducted by sex and for each race and ethnic group (e.g., Black, Hispanic, Asian/Pacific Islander, and American Indian/Alaskan Native) that constitutes 2% or more of the labor force in the relevant labor area or 2% 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. See 41 CFR 60-3.4C and 3.15A(2)(a).

“Adverse impact” is defined in the Uniform Guidelines on Employee Selection Procedures (UGESP) as “a substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a race, sex, or ethnic group.” See 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 “4/5 rule” or the “80% rule” of the UGESP. Under this rule, a selection rate for any race, sex, or ethnic group that is less than 4/5 (80%) of the selection rate for the group with the highest selection rate is generally regarded as evidence of adverse impact. See 41 CFR 60-3.4D.

The 80% rule is a general rule, and is not dispositive in all situations. The UGESP recognize that sample size and other factors may affect the reliability of the 80% rule as a measure of adverse impact, as explained below.

Smaller differences in selection rate may nevertheless constitute an adverse impact if the differences are both statistically and practically significant. For that reason, where the sample size is very large, the contractor should not assume that there is no evidence of an adverse impact based on the application of the 80% rule alone. Rather, tests of practical and statistical significance should be used to assess whether the selection procedure results in adverse impact. The UGESP also recognize that smaller differences in selection rate may constitute adverse impact where a user’s actions have discouraged applicants disproportionately on grounds of race, sex, or ethnic group. See 41 CFR 60-3.4D.

Conversely, greater differences in selection rate may not constitute adverse impact where the differences are based on small numbers and are not statistically significant, or where special recruiting or other programs cause the pool of minority or female candidates to be atypical of the normal pool of applicants from that group. For example, if a contractor selected three men and one woman from an applicant pool of 20 men and 10 women, the 80% rule would indicate an adverse impact. The selection rate for women is 10%, and the rate for men, 15%; 10/15 or 66 2/3% is less than 80%. Yet, the number of selections is too small to warrant a determination of an adverse impact absent a further finding of statistical significance. Where the 80% rule indicates an 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 an adverse impact. See 41 CFR 60-3.4D.

A four-step process is used to determine an 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 4/5 or 80%) than the selection rate for the highest group. If it is, an adverse impact is indicated in most circumstances.

For example:

APPLICANTS	HIRES	SELECTION RATE
American Indians	2	2/10 or 20%
Blacks	20	20/50 or 40%
Hispanics	30	30/60 or 50%
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% rule, based on the above information, an adverse impact is indicated for American Indians and Blacks but not for Hispanics.

If a selection procedure results in an adverse impact, the contractor is required to eliminate it or justify its continued use. The contractor can justify using a selection procedure that has an adverse impact by showing that the procedure has been validated according to the technical requirements of the UGESP. Validation is the demonstration of job-relatedness by showing the relationship between the selection procedure and job performance. “Validated in accord with [the UGESP] or properly validated” means a demonstration that a validity study meeting the standards of the UGESP has been conducted and has produced evidence sufficient to warrant the use of the procedure for the purpose intended. See 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 an adverse impact as possible. Further, the contractor is required to use the procedure having a less adverse impact if it is “substantially equally valid.” See 41 CFR 60-3.3B.

Under some circumstances, a contractor may be able to justify continued use of a procedure with adverse impact on a basis other than validity—specifically, where there is a “business necessity” for its continued use. The contractor may meet this requirement by providing evidence that the selection procedure is necessary for the safe and efficient operation of its business.

In sum, the UGESP recommends the following actions when an 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 an adverse impact only if it is properly validated and there is no equally effective procedure available that has a less adverse impact.



dol.gov/ofccp



OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS



www.dol.gov/ofccp

