OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

OFCCP

U.S. DEPARTMENT OF LABOR

Federal Contract Compliance Manual (FCCM)

www.dol.gov/agencies/ofccp

TABLE OF CONTENTS

INTRODUCTION 1

CHAPTER 1 DESK AUDIT 3

1A INTRODUCTION 3
- 1A00 TYPES OF COMPLIANCE EVALUATIONS 3
- 1A01 CONTENTS OF CHAPTER 5
- 1A02 PURPOSE OF THE DESK AUDIT 5
- 1A03 PRINCIPLES AND FOCUS OF DESK AUDITS 5
- 1A04 USE OF THE STANDARD COMPLIANCE EVALUATION REPORT 6
- 1A05 CASE MANAGEMENT SYSTEM 7
- 1A06 CONFIDENTIALITY OF INFORMATION 8
- 1A07 NOVEL ISSUES 8
- 1A08 CORPORATE MANAGEMENT COMPLIANCE EVALUATIONS 9
- 1A09 FUNCTIONAL AFFIRMATIVE ACTION PROGRAMS 9
- 1A10 PREAWARD COMPLIANCE EVALUATIONS 9
- 1A11 EDUCATIONAL INSTITUTION EVALUATIONS 9

1B PRE-DESK AUDIT ACTIONS 11
- 1B00 INITIAL CONTACT WITH THE CONTRACTOR 11
- 1B01 PREPARATION AND MAINTENANCE OF THE CASE CHRONOLOGY LOG 12
- 1B02 CREATION AND MAINTENANCE OF THE CASE FILE 13
- 1B03 SENDING THE SCHEDULING LETTER AND ITEMIZED LISTING 16
- 1B04 FOLLOW-UP CONTACT WITH CONTRACTOR AND JURISDICTION CHALLENGES 16
- 1B05 CONTACTING EEOC, VETS AND OTHER AGENCIES 17
- 1B06 INFORMATION ON COMPLAINTS FILED WITH OR BY OTHER AGENCIES 18
- 1B07 RELATIONSHIP OF OFCCP COMPLIANCE ACTIVITIES TO LITIGATION OR COURT ORDERS 19
- 1B08 REVIEW OF COMMUNITY RESOURCE FILES 19
- 1B09 REVIEW OF PREVIOUS COMPLIANCE ACTIONS 19

1C RECEIPT OF AAPs AND ITEMIZED LISTING DATA FOR DESK AUDIT 20
- 1C00 NONRECEIPT OF AAPs 20
- 1C01 NONRECEIPT OF ITEMIZED LISTING DATA 20
- 1C02 REGULATORY CITATIONS FOR RECORDKEEPING 21
- 1C03 EVALUATION PERIOD 23
- 1C04 ADDITIONAL DATA REQUESTS 23

1D REVIEW OF AAPs: OVERVIEW 24

1E REVIEW OF ALL AAPs AND ITEMIZED LISTING DATA TO ENSURE SUBMISSIONS INCLUDE REQUIRED CONTENT 25
1E00 ACTION WHEN AAP IS NOT CURRENT 25
1E01 INCLUSION 25
1E02 MISSING AAP ELEMENTS 25
1E03 MISSING ITEMIZED LISTING DATA 28

1F REVIEW OF AN EXECUTIVE ORDER AAP AND ITEMIZED LISTING DATA FOR ACCEPTABILITY 28
1F00 ORGANIZATIONAL PROFILE 29
1F01 JOB GROUPS 30
1F02 EXECUTIVE ORDER UTILIZATION ANALYSIS 32
1F03 PLACEMENT GOALS 34
1F04 ADDITIONAL REQUIRED ELEMENTS OF AN EXECUTIVE ORDER AAP 34
1F05 REVIEW OF EXECUTIVE ORDER ITEMIZED LISTING DATA FOR ACCEPTABILITY 36

1G REVIEW OF A SECTION 503 AAP AND ITEMIZED LISTING DATA FOR ACCEPTABILITY 40
1G00 ITEMS INCLUDED 40
1G01 POLICY STATEMENT 40
1G02 CONTRACTOR REVIEW OF PERSONNEL PROCESSES 41
1G03 CONTRACTOR REVIEW OF PHYSICAL AND MENTAL QUALIFICATIONS 41
1G04 REASONABLE ACCOMMODATION TO PHYSICAL AND MENTAL LIMITATIONS 42
1G05 HARASSMENT 43
1G06 EXTERNAL DISSEMINATION OF EEO POLICY 43
1G07 OUTREACH AND POSITIVE RECRUITMENT 43
1G08 INTERNAL DISSEMINATION OF EEO POLICY 44
1G09 AUDIT AND REPORTING SYSTEM 44
1G10 OFFICIAL RESPONSIBLE FOR AAP IMPLEMENTATION 44
1G11 TRAINING TO ENSURE AAP IMPLEMENTATION 45
1G12 DATA COLLECTION ANALYSIS 45
1G13 UTILIZATION GOAL ANALYSIS FOR INDIVIDUALS WITH DISABILITIES 45

1H REVIEW OF A VEVRAA AAP AND ITEMIZED LISTING DATA FOR ACCEPTABILITY 46
1H00 ITEMS INCLUDED 46
1H01 POLICY STATEMENT 46
1H02 CONTRACTOR REVIEW OF PERSONNEL PROCESSES 47
1H03 CONTRACTOR REVIEW OF PHYSICAL AND MENTAL QUALIFICATIONS 48
1H04 REASONABLE ACCOMMODATION TO PHYSICAL AND MENTAL LIMITATIONS 48

1H05 HARASSMENT 49
1H06 EXTERNAL DISSEMINATION OF EEO POLICY 49
1H07 OUTREACH AND POSITIVE RECRUITMENT 49
1H08 INTERNAL DISSEMINATION OF EEO POLICY 50
1H09 AUDIT AND REPORTING SYSTEM 50
1H10 OFFICIAL RESPONSIBLE FOR AAP IMPLEMENTATION 50
1H11 TRAINING TO ENSURE AAP IMPLEMENTATION 51
1H12 DATA COLLECTION ANALYSIS 51
1H13 VEVRAA HIRING BENCHMARK 51

1I SUMMARY OF ACCEPTABILITY PROBLEMS WITH AAPs AND ITEMIZED LISTING DATA 53

1J ANALYSIS OF SECTION 503 AAP: REVIEW OF ONLINE APPLICATION PROCESS 53

1K ANALYSIS OF AN EXECUTIVE ORDER 11246 AAP: OVERVIEW OF ITEMIZED LISTING DATA, EEO TRENDS, WORKFORCE STRUCTURE AND PERSONNEL PRACTICES 54
1K00 EEO-1 TREND ANALYSIS 54
1K01 WORKFORCE STRUCTURE AND PERSONNEL PRACTICES 55

1L ANALYSIS OF AN EXECUTIVE ORDER 11246 AAP: GOALS PROGRESS AND GOOD FAITH EFFORTS 56
1L00 ANALYSIS OF GOALS PROGRESS 56
1L01 EVALUATION OF GOOD FAITH EFFORTS 57
1L02 PLAN FOR EVALUATION OF GOOD FAITH EFFORTS 57

1M BASIS FOR POTENTIAL DISCRIMINATION ANALYSES 58

1N ANALYSIS OF AN EXECUTIVE ORDER 11246 AAP: AUDIT OF ORGANIZATIONAL PROFILE 58
1N00 UNDERREPRESENTATIONS AND CONCENTRATIONS 59
1N01 DETERMINING THE RELEVANT WORKFORCE SECTOR AND JOB AREAS 59
1N02 ANALYSIS BASED ON A PARTICULAR RACE OR ETHNICITY 61

1O ANALYSIS OF EXECUTIVE ORDER 11246 EMPLOYMENT ACTIVITY DATA 62
1O00 CONDUCTING STATISTICAL ANALYSES OF EXECUTIVE ORDER 11246 EMPLOYMENT ACTIVITY DATA 62
1O01 SPECIFIC RACE AND ETHNIC GROUP ANALYSIS 63
1O02 PROPER USE OF PRELIMINARY STATISTICAL RESULTS 63
1O03 STATISTICAL ANALYSIS SUMMARY 63

1P COMPENSATION ANALYSIS 65
1P00 GENERAL PRINCIPLES OF COMPENSATION DATA ANALYSIS 66
1P01 ITEMIZED LISTING DATA ON COMPENSATION 67
1P02 DESCRIPTIVE ANALYSIS OF COMPENSATION 67

1P03 SYSTEMIC STATISTICAL ANALYSIS OF COMPENSATION AT DESK AUDIT 68
1P04 CONCLUDING DESK AUDIT COMPENSATION ANALYSIS 69

1Q SCER SUMMARY OF POTENTIAL DISCRIMINATION AREAS AND ONSITE INVESTIGATIVE PLAN (ALL LAWS) 69

1R CONCLUSION OF THE DESK AUDIT 70
1R00 DOCUMENTS FOR CLOSING COMPLIANCE EVALUATION AFTER THE DESK AUDIT 70
1R01 REASONS TO PROCEED WITH ON-SITE REVIEW 71
1R02 COMPLETING APPROPRIATE SCER PAGES 71

CHAPTER 2 ON-SITE REVIEW 72

2A INTRODUCTION 72

2B DETERMINING THE NEED FOR AN ON-SITE REVIEW 73

2C ON-SITE REVIEW PREPARATION 74
2C00 PROHIBITION AGAINST RETALIATION 74
2C01 USE OF THE STANDARD COMPLIANCE EVALUATION REPORT AND INFORMATION MANAGEMENT 75
2C02 HISTORICAL DATA AND COMPLAINT HISTORY 76
2C03 ON-SITE PLAN 77
2C04 NOTICE OF THE ON-SITE DATE AND REQUESTS FOR ADDITIONAL INFORMATION 77

2D ON-SITE PROCESS 78
2D00 ENTRANCE CONFERENCE 78
2D01 FACILITY INSPECTION 79
2D02 COLLECTING INFORMATION: ACCESS TO CONTRACTOR RECORDS ..80
2D03 MANAGEMENT AND NONMANAGEMENT INTERVIEWS 81
2D04 EXIT CONFERENCE 82
2D05 RETURN ON-SITE REVIEW AND DENIAL OF ACCESS 82

2E COLLECTING INFORMATION FOR ANALYSIS 82
2E00 TYPES OF EVIDENCE 83
2E01 PERSONNEL ACTIVITY AND SELECTION PROCESS 84
2E02 SELECTION PROCEDURES AND TESTING 85
2E03 COMPENSATION 86

2F INTERVIEWS 89
2F00 GENERAL INTERVIEW PRINCIPLES AND PROCEDURES 89
2F01 MANAGEMENT INTERVIEWS 93
2F02 EMPLOYEE INTERVIEWS 93
2F03 ISSUES THAT ARISE DURING THE ON-SITE REVIEW 94

2G EXECUTIVE ORDER 11246 AAP REQUIREMENTS 94

2G00 EXECUTIVE ORDER 11246 AAP AND ITEMIZED LISTING DATA PROBLEMS 94
2G01 DESIGNATION OF RESPONSIBILITY FOR THE AAP 95
2G02 IDENTIFICATION OF PROBLEM AREAS: WHERE IMPEDIMENTS TO EQUAL EMPLOYMENT OPPORTUNITY EXIST 95
2G03 ACTION-ORIENTED PROGRAMS TO CORRECT PROBLEM AREAS 96
2G04 EVALUATION OF GOOD FAITH EFFORTS 96
2G05 INTERNAL AUDIT AND REPORTING SYSTEM TO MEASURE EFFECTIVENESS OF TOTAL AFFIRMATIVE ACTION PROGRAM 99

2H SECTION 503 AAP AND ADDITIONAL REQUIREMENTS 99
2H00 SECTION 503 AAP AND ITEMIZED LISTING DATA SUBMISSIONS 100
2H01 AVAILABILITY OF AAP FOR INSPECTION 104
2H02 INVITATION TO SELF-IDENTIFY AS AN INDIVIDUAL WITH A DISABILITY 104
2H03 DISABILITY-RELATED INQUIRIES, MEDICAL EXAMS, AND CONFIDENTIALITY OF DISABILITY INFORMATION 106

2I VEVRAA AAP AND ADDITIONAL REQUIREMENTS 107
2I00 VEVRAA AAP AND ITEMIZED LISTING DATA SUBMISSIONS 108
2I01 AVAILABILITY OF AAP FOR INSPECTION 112
2I02 INVITATION TO SELF-IDENTIFY AS A PROTECTED VETERAN 112

2J RELIGION AND NATIONAL ORIGIN REQUIREMENTS 114
2J00 CONTRACTOR POLICY AND IMPLEMENTATION 114
2J01 RELIGIOUS ACCOMMODATION 114
2J02 POTENTIAL HARASSMENT AND DISCRIMINATION 115
2J03 COMMUNITY CONTACTS 116

2K COMPLIANCE WITH SEX DISCRIMINATION REGULATIONS 116
2K00 DISCRIMINATION ON THE BASIS OF PREGNANCY 117
2K01 REVIEW OF CONTRACTOR POLICIES AND IMPLEMENTATION 117
2K02 LEAVE AND FRINGE BENEFITS 119
2K03 SEXUAL HARASSMENT 121

2L EQUAL OPPORTUNITY CLAUSES AND OTHER REQUIREMENTS 121
2L00 EQUAL OPPORTUNITY CLAUSES AND OTHER REQUIREMENTS OF EXECUTIVE ORDER 11246, VEVRAA AND SECTION 503 122
2L01 EXECUTIVE ORDER 13496 REQUIREMENTS 125
2L02 RECORDKEEPING 126

2M EMPLOYMENT ACTIVITY DATA REQUIREMENTS 126
2M00 ANALYZING THE SELECTION PROCESS 127
2M01 DISTINGUISHING OBJECTIVE FROM SUBJECTIVE SELECTION CRITERIA 128
2M02 ANALYSIS OF OBJECTIVE CRITERIA 129
2M03 ANALYSIS OF OBJECTIVE CRITERIA FOR ADVERSE IMPACT 130

2M04 ANALYSIS OF SUBJECTIVE CRITERIA AND DETERMINATION OF ADVERSE IMPACT 130
2M05 JUSTIFICATION OF SELECTION PROCEDURES WHEN ADVERSE IMPACT IS IDENTIFIED 131

2N LINKAGE AGREEMENTS 132
2N00 LINKAGE OBJECTIVES 132
2N01 LINKAGE REQUIREMENTS 132
2N02 IMPLEMENTATION UNDER EXECUTIVE ORDER 11246 132
2N03 WHERE LINKAGE AGREEMENTS ARE NOT REQUIRED (EXECUTIVE ORDER 11246 Only) 133
2N04 LINKAGE AGREEEMENTS FOR INDIVIDUALS WITH DISABILITIES AND PROTECTED VETERANS 133
2N05 CONFIRMATION OF LINKAGE AGREEMENT 134

2O ON-SITE REVIEW SUMMARY OR REPORT WRITING 134
2O00 SUMMARY OF FINDINGS 134

CHAPTER 3 CONSTRUCTION INDUSTRY COMPLIANCE PROGRAM 136

3A INTRODUCTION 136

3B COVERAGE AND CONTRACT CLAUSES 136
3B00 REGULATIONS APPLICABLE TO CONSTRUCTION CONTRACTORS 137
3B01 REQUIRED BID SOLICITATION NOTICE AND CONTRACT SPECIFICATIONS FOR CONSTRUCTION CONTRACTS 137
3B02 REQUIRED EQUAL OPPORTUNITY CONTRACT CLAUSES FOR CONSTRUCTION CONTRACTS 138
3B03 SUPPORT FROM OTHER AGENCIES RELATED TO CONSTRUCTION CONTRACTORS 139
3B04 MEGA CONSTRUCTION PROJECTS 140

3C GENERAL PRINCIPLES APPLICABLE TO THE CONSTRUCTION INDUSTRY 141
3C00 EXECUTIVE ORDER GOALS 141
3C01 PRECONSTRUCTION CONFERENCES 142
3C02 NOTICE OF SUBCONTRACT AWARDS 142

3D THE COMPLIANCE REVIEW PROCESS 143

3E PRE-REVIEW PREPARATION: SCHEDULING AND COORDINATION WITH OTHER AGENCIES 144
3E00 INITIAL CONTACT WITH THE CONTRACTOR AND SCHEDULING 144
3E01 PREPARATION AND MAINTENANCE OF THE CASE CHRONOLOGY LOG 144
3E02 CREATION AND MAINTENANCE OF THE CASE FILE 145
3E03 CONTACTING EEOC, VETS AND OTHER AGENCIES 146
3E04 INFORMATION ON EEO COMPLAINTS FILED WITH OR BY OTHER AGENCIES 147

3E05 REVIEW OF COMMUNITY RESOURCE FILES 148
3E06 REVIEW OF OFCCP COMPLIANCE ACTIONS 148
3E07 INTERAGENCY COORDINATION FHWA 148

3F ON-SITE REVIEW PROCESS OVERVIEW 149

3G ENTRANCE CONFERENCE 149

3H EXECUTIVE ORDER 11246 REVIEW OF RECORDS 150
3H00 PAYROLL RECORDS 150
3H01 EMPLOYMENT ACTIVITY RECORDS 151
3H02 COLLECTIVE BARGAINING AGREEMENT 151
3H03 INCLUSION OF THE EQUAL OPPORTUNITY CLAUSE IN SUBCONTRACTS 151
3H04 REVIEW OF PERSONNEL POLICIES FOR SEX DISCRIMINATION 152

3I EVALUATION OF IMPLEMENTATION OF AFFIRMATIVE ACTION STEPS SET FORTH IN 41 CFR 60-4.3(a) PARAGRAPH 7 153
3I00 EVALUATION OF RECRUITMENT PRACTICES 154
3I01 EVALUATION OF TRAINING 156
3I02 EVALUATION OF EEO POLICY IMPLEMENTATION 157
3I03 EVALUATION OF PERSONNEL OPERATIONS 160
3I04 EVALUATION OF CONTRACTING ACTIVITY 162

3J INTERVIEWS 163

3K PHYSICAL INSPECTION OF CONTRACTOR WORKSITES 163
3K00 INVESTIGATION OF COMPLIANCE 164
3K01 COMPLIANCE WITH EXECUTIVE ORDER 13496 164

3L COMPLIANCE WITH SEX DISCRIMINATION REGULATIONS 165

3M COMPLIANCE WITH RELIGION AND NATIONAL ORIGIN GUIDELINES 165

3N COMPLIANCE WITH VEVRAA AND SECTION 503 165

3O IDENTIFICATION AND RESOLUTION OF EMPLOYMENT DISCRIMINATION 167

3P EXIT CONFERENCE 167

3Q STANDARD CONSTRUCTION COMPLIANCE EVALUATION REPORT 167
3Q00 PURPOSE AND CONTENT OF THE SCER 167
3Q01 SUMMARY OF FINDINGS 169

3R NOTIFICATION OF COMPLIANCE REVIEW RESULTS AND RESOLUTION OF VIOLATIONS 170

3S EXAMPLES OF COMMON VIOLATIONS 170

3T REVIEW COMPLETION LETTER 172

3U REFERRAL FOR ENFORCEMENT 172

CHAPTER 4 CORPORATE MANAGEMENT COMPLIANCE EVALUATIONS 173

4A INTRODUCTION 173
4A00 PURPOSE OF CMCEs 173
4A01 SCOPE OF CMCE 174
4A02 CONFIDENTIALITY 175

4B PRE-DESK AUDIT ACTIONS 176
4B00 FOLLOW-UP CONTACT WITH CONTRACTOR 176
4B01 CORPORATION BACKGROUND RESEARCH 176
4B02 SEARCH FOR PUBLISHED REPORTS 176
4B03 RETRIEVAL OF "FORM 10-K" REPORTS 177
4B04 RETRIEVAL OF EEO-1 REPORTS 177
4B05 OFCCP COMPLIANCE HISTORY REPORTS 179
4B06 CONTACTING EEOC, VETS AND OTHER AGENCIES 179
4B07 FOLLOW-UP AND USE OF INFORMATION ON COMPLAINTS FILED WITH OR BY OTHER AGENCIES 179
4B08 RELATIONSHIP OF OFCCP COMPLIANCE ACTIVITIES TO EEO LITIGATION OR COURT ORDERS 180
4B09 REVIEW OF COMMUNITY RESOURCE FILES 180
4B10 REVIEW OF PAST OFCCP COMPLIANCE ACTIONS 180
4B11 EVALUATION AND ANALYSIS OF CORPORATE INFORMATION 181
4B12 EVALUATION OF EEO-1 REPORTS 183

4C RELATIONSHIP TO THE STANDARD DESK AUDIT 183

4D DESK AUDIT – REVIEW OF THE ORGANIZATIONAL PROFILE, JOB GROUP ANALYSIS AND UTILIZATION ANALYSIS 184
4D00 ANALYSIS OF NONFAVORED GROUPS' MANAGEMENT LEVEL PARTICIPATION 184
4D01 ANALYSIS OF FUNCTIONAL AREAS 186

4E DESK AUDIT: AAP AND EMPLOYMENT ACTIVITY INFORMATION DURING A REVIEW OF SELECTION PROCESSES AND DEVELOPMENTAL PROGRAMS 188

4F NOTICE OF ON-SITE REVIEW AND FOLLOW-UP DATA REQUESTS 189

4G ON-SITE REVIEW 190
4G00 ENTRANCE CONFERENCE 190
4G01 CORPORATE CULTURE 191
4G02 INTERVIEWS 192

4H ON-SITE: FILLING OF MANAGEMENT JOBS 193
4H00 GENERAL QUALIFICATION STANDARDS 193

4H01 EXTERNAL HIRES 195
4H02 SOURCES OF APPLICANTS AND CANDIDATES 195
4H03 SAMPLE QUESTIONS AND ANALYSIS FOR VARIOUS SEARCH SOURCES 196
4H04 INTERNAL DEVELOPMENT 198
4H05 MANAGEMENT TRAINING AND EXECUTIVE DEVELOPMENT 209
4H06 MENTORING AND NETWORKING 210

4I ON-SITE: RETENTION 212
4I00 OVERVIEW OF TOTAL COMPENSATION PACKAGES 212
4I01 RECOGNITION: AWARDS AND HONORS 216

4J ON-SITE: TERMINATIONS 217

4K COMPLETION OF COMPLIANCE EVALUATION: EXIT CONFERENCE, REPORT WRITING AND NOTICE OF EVALUATION 217
4K00 NOTICE OF EVALUATION COMPLETION 217

CHAPTER 5 FUNCTIONAL AFFIRMATIVE ACTION PROGRAM COMPLIANCE EVALUATIONS 219

5A INTRODUCTION 219
5A00 APPLICABILITY OF CHAPTER 219
5A01 PURPOSE OF THE FAAP 219
5A02 THE FAAP AGREEMENT 219
5A03 FAAP COMPLIANCE EVALUATIONS 220
5A04 COMPLETING THE SCER 220
5A05 OFCCP PARTICIPANTS IN FAAP COMPLIANCE EVALUATIONS 220

5B PRE-DESK AUDIT ACTIONS 221
5B00 CREATION AND MAINTENANCE OF THE CASE FILE 221
5B01 SENDING THE SCHEDULING LETTER AND ITEMIZED LISTING 221
5B02 FOLLOW-UP CONTACT WITH CONTRACTOR 222
5B03 OFCCP COMPLIANCE HISTORY REPORTS 222
5B04 CONTACTING EEOC, VETS AND OTHER AGENCIES 222

5C DESK AUDIT 223
5C00 REVIEW OF SECTION 503 AND VEVRAA AAPs 224

5D ON-SITE 224

5E COMPLIANCE EVALUATION COMPLETION 225

CHAPTER 6 COMPLAINT INVESTIGATION 226

6A INTRODUCTION 226

6B BASES OF COMPLAINT ALLEGATIONS 226
6B01 EXECUTIVE ORDER 11246 ALLEGATIONS 226
6B02 VEVRAA AND SECTION 503 ALLEGATIONS 227

6B03 RETALIATION, INTIMIDATION, AND INTERFERENCE ALLEGATIONS 228
6B04 EXECUTIVE ORDER 13496 INVESTIGATIONS 229

6C COMPLAINT RECEIPT AND PERFECTION 229
6C00 RECEIPT OF COMPLAINTS 229
6C01 WHO MAY FILE A COMPLAINT 229
6C02 PROVIDING CONTRACTOR THE 10-DAY NOTICE LETTER 230
6C03 COMPLAINT PERFECTION 230

6D INVESTIGATING THE COMPLAINT 232
6D01 TIMELY COMPLETION OF INVESTIGATION 232
6D02 CORRESPONDENCE 232
6D03 NOTIFYING THE CONTRACTOR AND COMPLAINANT THAT OFCCP WILL INVESTIGATE THE COMPLAINT 233
6D04 COUNSEL OR OTHER REPRESENTATION 233
6D05 CASE FILE 234
6D06 OFCCP CMS 237

6E TYPES OF COMPLAINT ALLEGATIONS 237
6E00 APPROACH TO INVESTIGATING COMPLAINT ALLEGATIONS 237
6E01 INVESTIGATIVE FRAMEWORK 238
6E02 SYSTEMIC ALLEGATIONS 238
6E03 HARASSMENT 239
6E04 RETALIATION AND INTERFERENCE 239
6E05 ALLEGATIONS SPECIFIC TO EXECUTIVE ORDER 11246 240
6E06 ALLEGATIONS SPECIFIC TO DISABILITY COMPLAINTS 240
6E07 ALLEGATIONS SPECIFIC TO VEVRAA (NONDISABILITY) COMPLAINTS 244
6E08 EQUAL OPPORTUNITY CLAUSE AND RECORDKEEPING REQUIREMENTS 245
6E09 NOVEL ISSUES 245

6F INVESTIGATIVE PLAN 246

6G INTERVIEWING THE COMPLAINANT BEFORE ON-SITE INVESTIGATION 246

6H OBTAINING DOCUMENTARY EVIDENCE AND RECORDS PRIOR TO ON-SITE INVESTIGATION 247
6H00 HISTORICAL DOCUMENTATION 248
6H01 POLICIES AND PRACTICES 248
6H02 OTHER DOCUMENTS RELEVANT TO THE COMPLAINT ALLEGATIONS 248

6I ON-SITE INVESTIGATIONS 249
6I00 NOTIFYING THE CONTRACTOR OF THE ON-SITE INVESTIGATION 249
6I01 ON-SITE INVESTIGATION: ROAD MAP 249

6I02 INTERVIEW PROCEDURES 251
6I03 GATHERING RELEVANT DATA AND CONDUCTING INTERVIEWS 254
6I04 REVIEW OF RECORDS 265

6J CONDUCTING ANALYSES AND THE INVESTIGATIVE REPORT 265

6K USE OF A NOTIFICATION OF RESULTS OF INVESTIGATION 266
6K00 SIGNATURES AND PROCEDURES 266
6K01 NOTICE TO LABOR UNION OF A VIOLATION FINDING.....266

6L RESOLUTION OF THE COMPLAINT 266
6L00 SETTLEMENT BEFORE COMPLETION OF INVESTIGATION.....267
6L01 PRIOR TO ISSUING A NO VIOLATION NORI 267
6L02 CLOSURE OF COMPLAINT WITH NO VIOLATION NORI.....268
6L03 CLOSURE OF COMPLAINT AND ISSUANCE OF "NOTICE OF RIGHT-TO-SUE" UPON REQUEST 268
6L04 NOTICE ISSUED UPON ADMINISTRATIVE CLOSURE 269
6L05 CLOSURE OF COMPLAINT WITH VIOLATION NORI AND CONCILIATION.....269

6M ENFORCEMENT 271

CHAPTER 7 EMPLOYMENT DISCRIMINATION REMEDIES.....272

7A INTRODUCTION 272
7A00 APPLICABILITY.....272
7A01 LIABILITY PHASE 272
7A02 PROCESS FOR REMEDY.....272
7A03 APPLICABLE LAW 272

7B TIMELINESS AND CONTINUING VIOLATION 273
7B00 CONTINUING VIOLATION 273

7C TYPES OF REMEDIES 274
7C00 DESIGNING THE REMEDY 275
7C01 CORRECTIVE REMEDIES 275
7C02 MAKE-WHOLE RELIEF 275
7C03 FRONT PAY 276
7C04 RETROACTIVE SENIORITY.....276
7C05 OTHER REMEDIES AFFECTING A UNION AGREEMENT.....278
7C06 BACK PAY 278
7C07 TIME LIMITS FOR RELIEF 280
7C08 CALCULATION OF BACK PAY IN INDIVIDUAL OR NONSYSTEMIC CASES 281
7C09 CALCULATION OF REMEDIES IN SYSTEMIC DISCRIMINATION CASES 282
7C10 CALCULATING VICTIM-SPECIFIC REMEDIES 282
7C11 CALCULATING FORMULA RELIEF 283
7C12 NONMONETARY RELIEF.....284

7D NOTIFICATION TO CLASS MEMBERS 285

7E LIABILITY OF SUCCESSOR EMPLOYER.....285

CHAPTER 8 RESOLUTION OF NONCOMPLIANCE 287

8A INTRODUCTION 287
8A00 APPLICABILITY.....287
8A01 REMEDIES.....287
8A02 PREPARATION OF DOCUMENTS 287
8A03 COMPUTATION OF TIME.....288
8A04 ORGANIZATION OF THIS CHAPTER.....288

8B OVERVIEW OF RESOLUTION AND ENFORCEMENT PROCEDURES AND DOCUMENTS.....288
8B00 GENERAL USE OF AN SCN.....289
8B01 USE OF AN SCN AT THE DESK AUDIT 289
8B02 DOCUMENTS USED IN THE ON-SITE AND OFF-SITE PHASES OF COMPLIANCE EVALUATIONS (Supply & Service and Construction).....292
8B03 DOCUMENTS USED IN COMPLAINT INVESTIGATIONS.....296
8B04 DOCUMENTS USED IN MONITORING CAs 300

8C NOTICE TO THE LABOR UNION OF A PROPOSED REMEDY 302
8C00 WHEN TO USE A NOTICE TO THE LABOR UNION.....302
8C01 CONTENTS OF THE LABOR UNION NOTICE.....302
8C02 WHO RECEIVES THE LABOR UNION NOTICE 303
8C03 SIGNATURE AUTHORITY.....303
8C04 UNION'S RESPONSE TO THE NOTICE 303

8D SHOW CAUSE NOTICE 303
8D00 APPLICABILITY.....304
8D01 WHEN AN SCN IS REQUIRED 304
8D02 CIRCUMSTANCES WHEN AN SCN IS NOT REQUIRED 305
8D03 CONTENTS OF AN SCN 305
8D04 WHEN TO USE AN AMENDED SHOW CAUSE NOTICE 305
8D05 WHO RECEIVES AN SCN OR ASCN 306
8D06 SIGNATURE AUTHORITY.....306
8D07 CONTRACTOR'S RESPONSE.....306
8D08 RESCISSION OF AN SCN 307

8E PREDETERMINATION NOTICE 307
8E00 USE OF A PDN 308
8E01 CONTENTS OF A PDN.....308
8E02 WHO RECEIVES A PDN 309
8E03 SIGNATURE AUTHORITY.....309
8E04 CONTRACTOR'S RESPONSE TO A PDN.....309

8F NOTICE OF VIOLATION.....310
8F00 WHEN TO USE AN NOV 310

8F01 CONTENTS OF AN NOV 310
8F02 WHO RECEIVES THE NOV 311
8F03 SIGNATURE AUTHORITY 311
8F04 CONTRACTOR'S RESPONSE TO AN NOV 311

8G CONCILIATION 311
8G00 BACKGROUND 312
8G01 GENERAL 312

8H CONCILIATION AGREEMENTS 312
8H00 WHEN TO USE A CA 312
8H01 CONTENTS OF A CA 313
8H02 TERMINATION DATE 314
8H03 SIGNATURE AUTHORITY 314

8I POST CA ACTIONS 314
8I00 RETENTION OF EVIDENCE OF VIOLATIONS 315
8I01 EVALUATION OF PROGRESS REPORTS 315
8I02 VIOLATION OF A CA 316

8J THE 15-DAY NOTICE 317
8J00 WHEN TO USE A 15-DAY NOTICE 317
8J01 PROCEDURES WHERE NO IRREPARABLE INJURY EXISTS 317
8J02 PROCEDURE WHERE IRREPARABLE INJURY EXISTS 317
8J03 WHO RECEIVES THE 15-DAY NOTICE 318
8J04 SIGNATURE AUTHORITY 318
8J05 CONTRACTOR'S RESPONSE TO THE 15-DAY NOTICE 318

8K ENFORCEMENT RECOMMENDATIONS 318
8K00 WHEN TO MAKE OR SEEK APPROVAL OF AN ENFORCMENT RECOMMENDATION 319
8K01 CONTENTS OF A COMPLIANCE EVALUATION FILE 319
8K02 CONTENTS IN A COMPLAINT INVESTIGATION 320
8K03 WHO RECEIVES THE ENFORCEMENT RECOMMENDATIONS 320
8K04 SIGNATURE AUTHORITY 321

8L PRE AND POST REFERRAL ISSUES RESULTING IN ENFORCEMENT PROCEEDINGS 321
8L00 PRE-REFERRAL TO RSOL 321
8L01 POST-REFERRAL TO RSOL 321

8M TYPES OF ENFORCEMENT PROCEEDINGS 322
8M00 ADMINISTRATIVE ENFORCEMENT PROCEEDINGS 322
8M01 JUDICIAL ENFORCEMENT PROCEEDINGS 322

KEY WORDS AND PHRASES 323

GLOSSARY OF ABBREVIATIONS 365

APPENDICES A-1 – A-13 369
APPENDIX A-1: U.S. DEPARTMENT OF LABOR OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS SUPPLY AND SERVICE STANDARD COMPLIANCE EVALUATION REPORT (SCER) 370
APPENDIX A-2: STANDARD COMPLIANCE EVALUATION REPORT (SCER) INSTRUCTIONS 394
APPENDIX A-3: INDEX FOR A SUPPLY AND SERVICE REVIEW 401
APPENDIX A-4: SAMPLE ON-SITE REVIEW PLAN 403
APPENDIX A-5: INDEX FOR A CONSTRUCTION REVIEW 404
APPENDIX A-6: STANDARD COMPLIANCE EVALUATION REPORT (CONSTRUCTION) 405
APPENDIX A-7: SPECIAL REMEDIAL CONSIDERATIONS APPLICABLE TO STOCK 406
APPENDIX A-8: INDEX FOR A COMPLAINT FILE 408
APPENDIX A-9: RETALIATION AND INTERFERENCE: COMPLAINT PROCESSING OUTLINE AND CHECKLIST 410
APPENDIX A-10: INVESTIGATIVE REPORT 414
APPENDIX A-11: INFORMATION RELATED TO FILING SUIT UNDER TITLE VII OF THE CIVIL RIGHTS ACT, TITLE I OF THE ADA AND THE EQUAL PAY ACT 415
APPENDIX A-12: "MACMILLAN" FACTORS CONCERNING SUCCESSOR EMPLOYER LIABILITY 417
APPENDIX A-13: TRANSMITTAL MEMORANDUM FOR AN ENFORCEMENT RECOMMENDATION 418

FIGURES 1 – 6 423
FIGURE F-1: COMPLIANCE CHECK CONTROL SHEET 424
FIGURE F-2: CASE CHRONOLOGY LOG (CC-53) 426
FIGURE F-3: COMBINED SCHEDULING LETTER AND ITEMIZED LISTING 427
FIGURE F-4: SCHEDULING LETTER AND ITEMIZED LISTING FOR SECTION 503 FOCUSED REVIEW 434
FIGURE F-5: FORM FOR COMPLAINT INVOLVING EMPLOYMENT DISCRIMINATION BY FEDERAL GOVERNMENT CONTRACTORS OR SUBCONTRACTORS 437
FIGURE F-6: STANDARD TEXT FOR CONCILIATION AGREEMENT 438

LETTERS L-1 – L-41 439
LETTER L-1: SAMPLE ADMINISTRATIVE CLOSURE LETTER FOR SUPPLY & SERVICE AND CONSTRUCTION COMPLIANCE EVALUATIONS 441
LETTER L-2: SAMPLE INQUIRY LETTER FOR REQUESTING COMPLAINT DATA FROM EEOC AND STATE AND LOCAL FEPS 442

LETTER L-3: SAMPLE LETTER FOR REQUESTING JOB LISTING FROM EMPLOYMENT SERVICE DELIVERY SYSTEMS (INCLUDING AMERICAN JOB CENTERS) 443
LETTER L-4: SAMPLE INQUIRY LETTER FOR REQUESTING INFORMATION ON PENDING REVIEW FROM VETERANS EMPLOYMENT AND TRAINING SERVICE 444
LETTER L-5: NOTICE OF CLOSING: COMPLIANCE EVALUATION (NO VIOLATIONS FOUND) 445
LETTER L-6: NOTICE OF CLOSING: VIOLATIONS FOUND AND RESOLVED 446
LETTER L-7: SUPPLY & SERVICE ON-SITE CONFIRMATION LETTER 447
LETTER L-8: SAMPLE LINKAGE LETTER 449
LETTER L-9: CONSTRUCTION COMPLIANCE EVALUATION NOTICE 451
LETTER L-10: CONSTRUCTION OUTREACH LETTER FOR NEW PROJECTS 455
LETTER L-11: 10-DAY NOTICE TO EMPLOYER/CONTRACTOR 457
LETTER L-12: 10-DAY NOTICE TO COMPLAINANT 459
LETTER L-13: LETTER TO EEOC (FULL OR PARTIAL TRANSFER OF COMPLAINT) 461
LETTER L-14: AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION 462
LETTER L-15: LETTER NOTIFYING CONTRACTOR OF INVESTIGATION 463
LETTER L-16: LETTER NOTIFYING COMPLAINANT OF INVESTIGATION 465
LETTER L-17: INQUIRY LETTER TO U.S. DEPARTMENT OF JUSTICE OR THE U.S. DEPARTMENT OF STATE 466
LETTER L-18: CONFIRMATION OF SCHEDULING OF ON-SITE INVESTIGATION 467
LETTER L-19: LETTER TO CONTRACTOR CONFIRMING COMPLAINT RESOLUTION 468
LETTER L-20: LETTER TO COMPLAINANT CONFIRMING COMPLAINT RESOLUTION 469
LETTER L-21: NOTIFICATION OF RESULTS OF INVESTIGATION: NO VIOLATION 470
LETTER L-22: NOTIFICATION OF RESULTS OF INVESTIGATION AND NOTICE OF RIGHT-TO-SUE UNDER TITLE I OF THE ADA OR TITLE VII OF THE CIVIL RIGHTS ACT OF 1964: NO VIOLATION (Dual filed) 472
LETTER L-22A: ENCLOSURE: NOTICE OF RIGHT-TO-SUE UNDER TITLE I OF THE ADA OR TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 474
LETTER L-23: NOTICE OF RIGHT-TO-SUE UNDER TITLE I OF THE ADA OR TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (Issued Upon Request) 475

LETTER L-24: NOTICE OF RIGHT-TO-SUE UNDER TITLE I OF THE ADA OR TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (Administrative Closure) 477
LETTER L-25: NOTIFICATION OF RESULTS OF INVESTIGATION: VIOLATION....479
LETTER L-26: SHOW CAUSE NOTICE: FAILURE TO SUBMIT EXECUTIVE ORDER 11246, SECTION 503 OR VEVRAA AAP(S)....481
LETTER L-27: SHOW CAUSE NOTICE: FAILURE TO SUBMIT ACCEPTABLE EXECUTIVE ORDER 11246, SECTION 503 OR VEVRAA AAP(S) 483
LETTER L-27A: SAMPLE ENCLOSURE TO LETTER L-27 485
LETTER L-28: SHOW CAUSE NOTICE: FAILURE TO SUBMIT EMPLOYMENT ACTIVITY OR COMPENSATION DATA FOR DESK AUDIT....486
LETTER L-29: SHOW CAUSE NOTICE: FAILURE TO SUBMIT CORRECTED EMPLOYMENT ACTIVITY AND/OR COMPENSATION DATA 488
LETTER L-30: SHOW CAUSE NOTICE: UNRESOLVED VIOLATIONS 490
LETTER L-30A: SAMPLE ENCLOSURE TO LETTER L-30 492
LETTER L-31: SHOW CAUSE NOTICE: UNRESOLVED VIOLATIONS 494
LETTER L-32: AMENDED SHOW CAUSE NOTICE FOR UNRESOLVED VIOLATIONS 495
LETTER L-33: SHOW CAUSE NOTICE FOR DENIAL OF ACCESS 497
LETTER L-34: RESCISSION OF AN ERRONEOUSLY ISSUED SHOW CAUSE NOTICE....499
LETTER L-35: PREDETERMINATION NOTICE 500
LETTER L-36: NOTICE OF VIOLATION....502
LETTER L-37: 15-DAY NOTICE: VIOLATION OF A CONCILIATION AGREEMENT....504
LETTER L-37A: SAMPLE ENCLOSURE TO LETTER L-37 505
LETTER L-38: RESCISSION OF THE 15-DAY NOTICE 506
LETTER L-39: PROGRESS REPORT RESPONSE LETTER 507
LETTER L-40: CLOSURE LETTER FOR SUBSTANTIVE VIOLATIONS 509
LETTER L-41: CLOSURE LETTER FOR SUBSTANTIVE VIOLATIONS 510

INTRODUCTION

At the Office of Federal Contract Compliance Programs (OFCCP), we protect workers, promote diversity through equal opportunity and enforce the law. We hold those who do business with the federal government – contractors and subcontractors – to the fair and reasonable standard that they take affirmative action and not discriminate based on race, color, religion, sex, sexual orientation, gender identity, national origin, disability or status as a protected veteran. Additionally, we ensure that contractors and subcontractors do not discriminate against applicants or employees for inquiring about, discussing or disclosing their compensation or, in certain circumstances, the compensation of others.

Among the ways OFCCP protects employees of companies doing business with the federal government, and educates these companies about their rights and obligations, is conducting quality compliance evaluations and complaint investigations.

The Federal Contract Compliance Manual (hereafter referred to as the "FCCM" or the "Manual") does not establish substantive agency policy. Therefore, if there is an inconsistency between material in the Manual and OFCCP's policies and its implementing regulations, the latter two are controlling. OFCCP continues to use directives and other issuances to communicate substantive policy guidance, procedures and agency enforcement priorities to its compliance officers (COs) and covered contractors and subcontractors. This Manual is subject to change without public notice. The FCCM does not create new legal rights or requirements, or change current legal rights or requirements for federal contractors. The official sources for contractors' compliance obligations remain Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973 (Section 503), as amended; the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974, as amended; OFCCP's regulations at 41 Code of Federal Regulations (CFR) Chapter 60; and applicable case law.

This revised FCCM provides new and experienced COs with the procedural framework for executing quality and timely compliance evaluations and complaint investigations. It provides procedural and technical guidance on compliance issues based on current agency procedures and processes, and improves efficiency and consistency across the agency's regional and field offices. It may also provide covered contractors and subcontractors more transparency, certainty, and clarity about basic OFCCP procedures and processes. That said, there might be slight differences between regions and offices because some discretion remains with COs and their supervisors as to the best way to manage individual compliance evaluations and investigations within the framework created by the Manual. Remember, these differences should be minor and should occur infrequently because one of the goals of the Manual is standardization. All references to the terms "compliance officer" and CO in this Chapter and throughout the Manual include any OFCCP employee that is responsible for the tasks or activities described.

The Manual has eight chapters, a list of key words and phrases, a glossary and several attachments, including sample forms and letters. The chapters cover how OFCCP's COs, and others responsible for conducting the activities covered in the Manual, conduct a desk audit, an on-site review, a construction industry compliance evaluation, a corporate management compliance evaluation and a complaint investigation. It also covers the agency's functional affirmative action program (FAAP), the various types of discrimination remedies and ways to resolve noncompliance issues.

The national office wishes to acknowledge the contributions of our regional and field staff during the development of this revised Manual. Their insight and experience greatly enriched this Manual. The agency is dedicated to providing its COs with ongoing support and training because we believe that a well-trained workforce is an effective workforce. We will continue supplementing the processes and procedures in this Manual with uniform staff training and by providing other appropriate resources.

CHAPTER 1
DESK AUDIT

1A INTRODUCTION

The regulations implementing Executive Order 11246, as amended, authorize OFCCP to conduct compliance evaluations of federal contractors.[1] Compliance evaluations determine whether federal contractors maintain nondiscriminatory hiring and employment practices. OFCCP also uses them to determine whether contractors are taking affirmative action to ensure that applicants and employees are treated without regard to race, color, religion, sex, sexual orientation, gender identity or national origin. These evaluations also enable OFCCP to assess whether contractors treat applicants and employees in a manner that does not discriminate against them for asking about, talking about, or sharing information about pay with other employees or applicants. Other regulations permitting OFCCP to conduct compliance evaluations are 41 CFR 60-300.60 implementing provisions of VEVRAA, as amended, 38 U.S.C. 4212; and the regulations at 41 CFR 60-741.60 implementing Section 503, as amended, 29 U.S.C. 793. These evaluations are to determine whether federal contractors are complying with their obligations to ensure nondiscrimination. They also determine whether contractors are taking affirmative action to employ, promote, train, retain and provide reasonable accommodation to certain protected veterans and individuals with disabilities, respectively.

1A00 TYPES OF COMPLIANCE EVALUATIONS

OFCCP may conduct a compliance evaluation that consists of one, or any combination of, the following investigative procedures:

- Compliance review;
- Off-site review of records;
- Compliance check; and
- Focused review.

Each of the investigative procedures is discussed in this chapter;[2] the first is compliance review procedures. A compliance review is a comprehensive analysis and evaluation of the employment practices of the contractor, including the contractor's written affirmative action program (AAP), and the results of the contractor's affirmative action efforts. A compliance review may proceed in three stages:

- Desk audit;

---

[1] 41 CFR 60-1.20. The term "contractor" as used in the Manual includes "subcontractors" unless otherwise noted.

[2] The investigative procedures discussed in this chapter may apply to both construction and supply and service contractors.

- On-site review; and
- Off-site analysis.

However, the regulations do not require an on-site review or off-site analysis in all cases. Depending on the circumstances or the results of the desk audit, a compliance review may:

- Close after the desk audit;
- Continue with an on-site review; or
- Continue with an off-site analysis of the information gathered during or pursuant to the on-site review.

An off-site review of records is an analysis and evaluation of all or some portion of the contractor's AAPs and supporting documentation, and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether the contractor complied with the requirements of Executive Order 11246, Section 503 and/or VEVRAA, as appropriate. COs must use the desk audit procedures outlined in this chapter when conducting an off-site review of records.

A compliance check is an examination to determine whether a contractor maintained certain records as required by the regulations at 41 CFR 60-1.12, 41 CFR 60-300.80, and 41 CFR 60-741.80. The contractor has the option of providing the documents either on-site or off-site. Therefore, COs[3] must contact the contractor to determine whether the requested records will be provided on-site or off-site. COs will also need to contact the contractor during the review if they need specific issues clarified. A compliance check need not include an on-site review. If a contractor provides records off-site, but a CO finds that it may be appropriate to conduct a physical, on-site inspection, the CO must discuss the matter with his or her supervisor.[4]

Finally, a focused review is an on-site review focused on one or more components of the contractor's organization, or one or more aspects of the contractor's employment practices. OFCCP may conduct a focused review to determine the contractor's compliance with a particular legal authority or may conduct a focused review of a particular employment practice under all of the laws OFCCP enforces.[5] For example, in a Section 503 focused review, the CO would review policies and practices of the contractor related solely to Section 503 compliance. OFCCP will identify the subject of the focused review and inform the contractor before the start of the review.

---

[3] All references to the terms "compliance officer" and CO in this Chapter and throughout the Manual include any OFCCP employee that is responsible for the tasks or activities described.

[4] See Chapter 2 – On-Site Review. That chapter covers on-site review procedures, including any required supervisory approvals.

[5] See Directive 2018-04, "Focused reviews of contractor compliance with Executive Order 11246 (E.O.), as amended; Section 503 of the Rehabilitation Act of 1973 (Section 503), as amended; and Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended." In the focused reviews anticipated by this Directive, OFCCP would go on-site and conduct a comprehensive review of the particular authority or employment practice at issue.

1A01 CONTENTS OF CHAPTER

This chapter outlines the procedures COs use to conduct a desk audit during a compliance evaluation, whether it is conducted in the office or on-site. The elements of this chapter also apply when COs are conducting compliance evaluations using the investigative procedures for the off-site review of records. Additionally, this chapter references the relevant sections of the Standard Compliance Evaluation Report (SCER) that COs must complete during the desk audit stage of compliance evaluations.

1A02 PURPOSE OF THE DESK AUDIT

By conducting a desk audit of the contractor's AAPs and supporting documentation provided by contractors, a CO begins to determine whether a contractor is complying with all relevant provisions of 41 CFR Chapter 60, specifically:

- Applicable nondiscrimination provisions; and
- Applicable affirmative action provisions.

1A03 PRINCIPLES AND FOCUS OF DESK AUDITS

A desk audit typically enables COs to review a contractor's compliance with its affirmative action and equal opportunity obligations at a particular establishment. COs must conduct desk audits following these general principles:

a. *Equal Employment Opportunity (EEO)*. A contractor's personnel policies and practices must not have the purpose or effect of discriminating because of race, color, religion, sex, sexual orientation, gender identity, national origin, disability or status as a protected veteran, or because they discussed, inquired about, or disclosed their pay or, in certain circumstances, the pay of other employees. Contractors must eliminate and remedy discrimination that, for example, limits a job applicant's or an employee's ability to engage in open and fair competition for a job or position, or that results in paying employees differently based on race, sex or membership in other protected classes.

b. *Affirmative Action Program*. An AAP is a management tool. The written AAP includes diagnostic and self-monitoring components as well as a set of specific and result-oriented policies and procedures designed to achieve EEO.

c. *Inclusion and Acceptability*. An AAP is assessed for "inclusion" and "acceptability." This chapter discusses these concepts more fully in sections 1E – 1H of this chapter.

When conducting the desk audit, COs focus on a review of the following areas:

a. *Workforce Structure, Personnel Policies and Procedures*. COs examine a contractor's personnel policies and procedures to determine if they warrant in-depth investigation, such as an on-site review. Likewise, an examination of a contractor's basic organizational or workforce structure may reveal irregularities that merit investigating.

b. *Problem Areas and Action-Oriented Programs.* COs examine whether a contractor identified any problem areas, and, if so, whether the contractor developed and executed action-oriented programs designed to correct the problem areas. In doing so, COs should seek to determine at least these specific things:

- Whether there are any areas with a lack of progress toward established goals;
- Whether further information is needed in any area; and
- Whether an on-site visit is needed to evaluate the contractor's efforts to develop and implement AAPs designed to improve opportunities for minorities, women, people with disabilities and protected veterans.

c. *Potential Discrimination.* COs must be aware of the signs of potential discrimination. Being aware of and alert to these signs allows a CO to assess when further investigation is required. Below are examples of signs of potential discrimination.

- Individuals in a particular race, sex, or ethnicity are significantly overrepresented or underrepresented in a particular area of the workforce.
- Indications exist that an employment practice or procedure has adversely affected individuals based on their race, sex, or ethnicity.
- Compensation practices of a contractor result in differences in pay that appear to be based on race, sex, or ethnicity.
- Indications exist that leave for family caregiving is applied differently for men and women.
- The contractor has policies that could adversely affect employees with disabilities, such as a "no leave" policy or a policy requiring 100% recovery before allowing an employee to return to work.

1A04 USE OF THE STANDARD COMPLIANCE EVALUATION REPORT

The SCER is a tool used by COs to conduct and document desk audits. The SCER and its instructions, found in Appendices A-1 and A-2, establish a framework for conducting the desk audit and assisting in the development and implementation of the on-site investigative plan. COs use the SCER, either in whole or in part, when conducting a compliance evaluation using the compliance review, off-site review of records or focused review investigative procedures discussed in subsection 1A00 of this chapter. Compliance checks require the completion of the Compliance Check Control Sheet, rather than the SCER.[6]

The SCER begins with a Contractor Information section in which the CO records basic information about the contractor, including address, company contacts, type of industry, contract coverage, and workforce composition. After the Contractor Information section, there is a Case Summary and

[6] See Figure F-1 – Compliance Check Control Sheet.

Recommendations section that serves as the final assessment of the compliance evaluation, listing all findings. These two sections are then followed by three main parts.[7]

a. *Part A: Preparation*. Part A includes general information gathered by the CO during the preparatory stages of a compliance evaluation, such as the contractor's problems in prior compliance evaluations, information on known complaints or enforcement proceedings, and any collaboration with or referrals to other agencies during the compliance evaluation.

b. *Part B: Desk Audit.* Part B records the results of the CO's desk audit. It documents the CO's initial review of the contractor's AAPs and Itemized Listing data for inclusion and acceptability, and summarizes any problems the CO finds regarding the acceptability of the AAPs and Itemized Listing data, and provides resolutions for those problems. Part B also provides for analysis of Executive Order 11246 affirmative action progress and identifies any areas where a CO needs additional information to determine the extent of a contractor's good faith efforts. This Part also includes an assessment of a contractor's Section 503 utilization analysis and outreach assessment, as well as the VEVRAA outreach assessment. The CO also records results of the analyses performed on the employment activity provided by the contractor (*e.g.,* terminations, compensation) and notes any other problems for an on-site investigation. For any problem unresolved at the conclusion of the desk audit, the SCER requires the development of an On-Site Plan.[8]

c. *Part C: On-Site Review*. Part C records the results of an on-site review. It provides for the CO to document verification of the contractor's implementation of certain equal opportunity clause requirements (*e.g.,* posting current required EEO notices), implementation of the regulations prohibiting discrimination on the basis of sex, and implementation of the guidelines on discrimination based on national origin and religion. The CO also records the on-site review findings for any potential systemic or individual discrimination that was identified during the desk audit or discovered during the on-site review. These findings include a discussion of the nature of the problem(s), relevant evidence collected and reviewed, actions (if any) taken to resolve the problem, and whether and how the problem was resolved.

1A05 CASE MANAGEMENT SYSTEM

The Case Management System (CMS) is the data collection component of the OFCCP Information System (OFIS) COs use to record basic information about the contractor, to track major events encountered throughout the evaluation, and to summarize any violations found and remedies obtained. COs must ensure that all relevant dates, information, and occurrences are promptly entered into CMS, beginning with the initial scheduling of the compliance evaluation and ending with the closure of the review, including the Conciliation Agreement (CA) monitoring period, if applicable. COs should refer to the CMS Manual for further instruction on how and when to enter case status information. The reporting component of OFIS is the Executive Information System (EIS), used by COs in combination with historical records to research past OFCCP compliance evaluations.

---

[7] The SCER also has another part (Part D) used only when a CO conducts a Corporate Management Compliance Evaluation. See Chapter 4 for more on this type of compliance evaluation.

[8] FCCM 2C03 – On-Site Plan.

1A06 CONFIDENTIALITY OF INFORMATION

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

Under FOIA, members of the public may request the release of agency records. If a CO receives a request for disclosure of any records obtained from a contractor, the CO must immediately refer the request to OFCCP's designated regional or national FOIA coordinator, as appropriate. The FOIA coordinator must evaluate the request to determine whether any exemptions from disclosure apply or if the agency is required to release records that OFCCP received from a federal contractor. Before releasing any records provided by the contractor, the FOIA coordinator will notify the contractor of its opportunity to object to a release of records.

For instance, OFCCP will notify contractors of any FOIA request for their EEO-1 data. If a contractor objects to disclosure, then OFCCP will not disclose the records if OFCCP determines that the contractor's objection is valid. FOIA exemption 4 recognizes the confidentiality of this data and, in combination with FOIA exemption 3 and the Trade Secrets Act, provides the necessary tools to protect it from public disclosure, if appropriate.

1A07 NOVEL ISSUES

Novel issues are those that are unfamiliar, unique or fall outside the norm. Periodically, the national office will identify certain novel issues and develop specific procedures to address them. COs may encounter novel issues in a compliance evaluation. When this occurs, they must, in coordination with their supervisor and regional office, contact the Division of Program Operations (DPO) in the national office to determine the approach to use, data to obtain and analyses to conduct before recommending a finding of compliance or noncompliance. Novel issues include those not routinely addressed, like a publicly announced contractor preference in employment to Indians and Native Americans living on or near an Indian or Native American Reservation.[10] Novel issues could also include compliance evaluations that involve coordination with the Expert Services Branch in DPO on issues like testing, multi-establishment contractors, and complex or unusual compensation issues. Chapter 6 of this Manual includes a brief discussion of novel issues in the context of complaint investigations.

---

[9] See 41 CFR 60-1.20(g), 60-300.81, 60-741.81.

[10] In this instance, the CO and supervisor would coordinate with the Director of OFCCP's Indian and Native American Employment Rights Program (INAERP) to address the impact of the contractor's use of a publicly announced preference in employment to Indians and Native Americans.

1A08 CORPORATE MANAGEMENT COMPLIANCE EVALUATIONS

Under the regulations at 41 CFR 60-2.30 on corporate management compliance evaluations (CMCEs), COs may conduct a CMCE to ascertain whether individuals are encountering artificial barriers to advancement into mid-level and senior corporate management. The desk audit procedures outlined in this chapter apply to CMCEs. We discuss CMCEs in Chapter 4 of this Manual.

1A09 FUNCTIONAL AFFIRMATIVE ACTION PROGRAMS

Under the regulations at 41 CFR 60-2.1(d)(4), a contractor can seek the agency's agreement to develop and use an AAP that is based on a functional or business unit instead of an establishment. This type of AAP is called a functional AAP or FAAP. The desk audit procedures outlined in this chapter apply to both traditional and functional AAPs. We discuss FAAPs in Chapter 5 of this Manual.

1A10 PREAWARD COMPLIANCE EVALUATIONS

Under the regulations at 41 CFR 60-1.20(d), 60-1.29, 60-300.60(d), and 60-741.60(c) on preaward compliance evaluations, an agency is required to notify OFCCP and request a preaward evaluation before a nonconstruction contract or first tier subcontract of $10 million or more is awarded. Within 15 calendar days of the notice, OFCCP will inform the awarding agency of its intent to conduct a preaward compliance evaluation. If OFCCP informs the agency of its intent to conduct a preaward evaluation, OFCCP is allowed an additional 20 calendar days after that date to provide a conclusion relative to the contractor's compliance.

1A11 EDUCATIONAL INSTITUTION EVALUATIONS

If an educational institution holds a federal contract, it may be scheduled for a compliance evaluation. While the desk audit procedures and principles in this chapter apply to educational institution evaluations, the CO should consider the unique nature of these contractors. Educational institutions have the same obligation as other contractors to prepare and maintain AAPs and submit them along with Itemized Listing data when scheduled for a compliance evaluation. However, the data submitted by an educational institution may be structured differently and include identification of employment practices that are unique to them. Despite any differences in the nature of educational institutions compared to other contractors, the CO will evaluate the contractor's compliance with all applicable regulations and conduct required analyses, such as impact ratio, compensation, selection process, and selection criteria analyses.

a. *Institution type and organizational structure*. When evaluating an educational institution, the CO should identify the institution type and its organizational structure, identifying autonomous components and individuals who have the authority to make personnel decisions. Educational institutions fall generally into four types: universities, senior colleges, vocational colleges and junior/community colleges. The structure varies not only based on the type and size of the institution but also on whether it is a public or private entity. This may impact how personnel data is grouped and how employment practices are analyzed.

b. *Employment data and workforce composition.* In educational institution evaluations, the CO will examine data regarding the educational institution's workforce composition, tenure

requirements, and practices on hiring, promotion, termination, and compensation. Unlike other contractors, the labor force of educational institutions is tracked through a reporting system called the Integrated Postsecondary Education Data System (IPEDS).[11] The CO may start with the IPEDS categories to identify similarly situated employee groups but if they are too broad, the CO will narrow down the categories to more appropriate job groups to conduct meaningful analyses. Educational institution workforces generally include instructional staff and noninstructional staff.[12] The instructional staff workforce includes nontenure track, tenure track, and tenured instructional staff while the noninstructional staff workforce includes executive, administrative, professional, technical, clerical, and all other nonteaching services at the institution. Whereas instructional staff are typically grouped by department or school, noninstructional staff may overlap or spread across the educational institution.

c. *Hiring, terminations and promotion practices*. Evaluating employment practices applicable to noninstructional staff is similar to that conducted in other compliance evaluations. However, evaluating employment practices concerning instructional staff may present a unique challenge requiring the CO to tailor inquiries, data requests and the required analyses. For example, instructional staff vacancies may be filled by departmental committees that are formed to recruit and screen for a vacant position. Candidates deemed qualified by the committees are submitted to the Dean or Provost for selection. Academic policies and procedures regulate who will be on the committees, where to advertise and the organizations from which to solicit candidates; and procedures and criteria to follow in instructional staff selection.

   In addition to the hiring, termination and promotion practices, the granting of tenure to instructional staff and applicable tenure requirements and data should be examined by the CO. Tenure is protected academic status intended to grant instructional staff permanent appointments. Promotion for tenure track instructional staff usually follows a line of progression such as assistant professor, to associate professor, to professor. Comparable to hiring, the decision to grant tenure to an instructional staff member is made by a departmental committee. Some of the common criteria considered for granting tenure include: teaching ability and effectiveness; research and publications; professional services; and services to the institution or community. Not granting tenure or revoking tenure is an adverse employment action that may further result in the termination of the instructional staff member. As with hiring, termination, and promotion practices, it may be necessary to request data on tenure decisions.

d. *Compensation*. Educational institutions typically operate separate pay systems for each workforce, *e.g.*, instructional staff and noninstructional staff. There are also different pay systems to reflect the different workforces when the educational institution is a public institution. The CO must obtain written policies and procedures on employee compensation, including policies on determining base salary, pay incentives, pay increases, bonuses and other

---

[11] IPEDS is a system of interrelated surveys conducted annually, which gathers information from every college, university, and technical and vocational institution in the United States and other jurisdictions (such as Puerto Rico) that participates in the federal student financial aid programs.

[12] OFCCP will use the terms instructional staff and noninstructional staff to distinguish between the two workforces. Instructional staff refers to faculty members and others in a teaching capacity. Noninstructional staff refers to all other employees who are not in a teaching capacity.

factors impacting compensation such as union status and payment for additional responsibilities at the institution. In addition to base salary and bonuses, the CO should gather data on factors that may affect compensation such as the national ranking of the educational institution, field of study, scholarship, research, publications, honors and awards.

1B PRE-DESK AUDIT ACTIONS

This section discusses the various steps and actions that COs must take before starting a compliance evaluation of a contractor establishment. These steps include:

- Contacting the contractor;
- Setting up appropriate case files and logs; and
- Obtaining relevant information about the contractor from other EEO and U.S. Department of Labor (DOL) enforcement agencies.

1B00 INITIAL CONTACT WITH THE CONTRACTOR

This subsection covers information that COs gather through their initial contact with the contractor, including contact information for the contractor and the contractor's representative, and any information that may preclude the evaluation (*e.g.,* establishment is closed, the establishment is part of an approved FAAP agreement, or OFCCP has completed a review of the establishment in the past 24 months). If the contractor contests OFCCP's jurisdiction or provides any information that may preclude the evaluation, the CO would follow the process outlined in subsection 1B04 below.

a. *Contractor Information*. Before issuing a Scheduling Letter and Itemized Listing, COs must verify the following information:

- The name of the highest-ranking management official at the establishment;
- The legal name of the company;
- The name and email of the person responsible for the preparation and implementation of the contractor's AAPs; and
- The correct mailing address for the establishment.

If an establishment is part of a larger entity, the CO must obtain the name of the corporate chief executive officer (CEO), the name of the corporate person responsible for EEO and affirmative action matters and the correct corporate mailing address. COs enter this basic identifying information in the Contractor Information section of the SCER.

b. *Representation*. A contractor's statement about representation can come during the initial contact or at some later point. When a contractor indicates that it is or will be represented by counsel or a consultant company, a CO must ask the contractor to provide written confirmation of the representation, including:

- The contact information for the representative that includes the representative's name, address, email, and phone number; and

- The scope of the representative's authority, including whether the authority granted to the representative extends to negotiating a settlement, if necessary, on behalf of the contractor.

A CO must also ask the contractor to clarify in writing as a part of the representation confirmation whether:

- All contacts, including routine ones to make appointments or to clarify data or other information, should be made through the representative; and

- All correspondence should be provided only to the representative or if a copy is to be provided to the contractor.

The CO obtains the same written confirmation if a person indicates to the CO or another representative of OFCCP that he or she represents the contractor. After receiving written confirmation of representation, a CO must handle contacts and correspondence according to its terms for the duration of the evaluation. The handling of contacts and correspondence will change if the contractor specifies a different period or subsequently alters its instructions. Alterations of representation instructions must be in writing.

COs provide the contractor's highest-ranking management officials copies of all substantive documents that they mail. For these purposes, we define substantive documents as documents that this Manual requires a CO to mail. This would include, for example, any Predetermination Notice (PDN), Notice of Violation (NOV), Show Cause Notice (SCN), and CA.

1B01 PREPARATION AND MAINTENANCE OF THE CASE CHRONOLOGY LOG

COs must prepare and maintain a Case Chronology Log for each compliance evaluation. This log is an integral part of the case file and is an invaluable tool in tracking the progress and the status of the case.[13] It is, therefore, important that COs keep the Case Chronology Log current. A Case Chronology Log includes:

- Event summaries that begin with the initial contact with the contractor and continue through to the approval of case closing documents.

- Documentation of all telephone conversations, emails, correspondence and meetings associated with the evaluation, indicating the date, nature of the contact, person contacted, a summary of discussion or actions taken, and the CO's name.

Records of telephone calls in the log should include the time of the call. All meetings must include the date, location, and names of the people in attendance. In addition, COs must record in the log all requests for data and records, and the dates the CO received these items. COs must record all events and actions as they occur.

[13] Figure F-2 – Case Chronology Log (CC-53).

Many COs print a hardcopy of the Case Chronology Log to facilitate their ability to write in the day-to-day events and activities as they occur. This practice is acceptable as long as the final Case Chronology Log included in the case file is typed, legible and maintained electronically.

1B02 CREATION AND MAINTENANCE OF THE CASE FILE

COs must create and maintain a case file for each scheduled compliance evaluation. The case file generally consists of various folders. To set up a case file, COs must create individual folders using the below headings.[14]

- Folder 1: Standard Compliance Evaluation Report (SCER) and Data Pertaining to SCER Findings
- Folder 2: Case Chronology Log, Correspondence and Meeting Notes
- Folder 3: Collective Bargaining and Other Agreements, and Miscellaneous Items
- Folder 4: Solicitor of Labor (SOL) Opinions, Joint Review Committee (JRC)[15] Memoranda and Post-SCER Update
- Folder 5: Progress Reports
- Folder 6: Historical Review Results
- Folder 7: AAP and Itemized Listing Data

COs must add information and documents to the appropriate folder throughout the compliance evaluation. If enforcement becomes necessary, COs provide the compliance evaluation case file to the Solicitor's Office for further action. It is critically important that all information obtained, observed or reported be part of the case file and remain there through case closure.

Once again, maintaining these files is crucial. This maintenance includes labeling the folder and any additional folders or subfolders needed (*e.g.,* Folder 1A, 1B). Labeling is especially useful when the material in a folder is voluminous. COs must arrange the documents in each folder by date, with the most recent document on top unless directed otherwise. COs are required to attach certain documents in each folder to the left or right side of the folder, as indicated below. When there are 10 or more separate documents in a folder, the CO must prepare an index and place it in the front of that folder.

A complete and thorough case file is critically important, especially if enforcement becomes necessary. Therefore, COs must be sure that the case file contains all documents obtained or generated during the compliance evaluation, not just the material that supports the conclusions

---

[14] Though the case file folder numbers and titles do not change, the case file contents may vary based upon the investigative procedures used in the compliance evaluation, and the availability and existence of specific documents.

[15] The Joint Review Committee (JRC) is a committee – consisting of district office staff members working on the complaint, regional office staff members and representative(s) of the Solicitor's Office – that discusses the complaint investigation and findings. National office staff may also participate in these discussions.

reached. For example, the file should include both evidence that supports the CO's violation findings, as well as evidence that supports the contractor's rebuttal. The case file must contain all contractor records and unaltered copies of all email correspondences in paper or electronic format. Drafts of OFCCP memoranda are not included in the case file. COs retain only final versions of agency memoranda.

If a CO is submitting a case for enforcement, a Transmittal Memorandum, as discussed in Chapter 8 of this Manual on the resolution of noncompliance, must accompany the case file. A complete copy of at least one contract or subcontract establishing coverage during the entire period at issue is also required, continuing to the present, if available. Additionally, the enforcement submission must include copies of all relevant analyses, properly labeled, in electronic format. Remember to keep a copy of all files submitted for enforcement in the appropriate field office. Below is a list of the folders and their content.[16]

Folder 1: Standard Compliance Evaluation Report (SCER) and Data Pertaining to SCER Findings. This folder contains the SCER and data pertaining to SCER findings, such as:

- CO notes, worksheets and analyses, including any regression analyses;
- Witness statements that are appropriately labeled;
- Contractor records; and
- Other information and records pertinent to the issues investigated.

COs should organize the material according to the relevant SCER issue, and tabs and labels them accordingly. Documents must cross-reference other folders, as appropriate. For example, if a SCER document in Folder 1 also involves or is relevant to a union contract matter, the document in Folder 1 will refer to the union contract placed in Folder 3. COs are required to attach certain documents to the left side of this folder. The CMS Form CC-100A should be placed on top and the following items should be placed underneath:

- Any contract coverage information provided by DPO or copies of contracts;
- CMS forms associated with the review;
- EEO-1 reports;
- Contractor extension requests for the AAPs and OFCCP responses, including extensions of time frames in a consent decree; and
- Preaward Clearance Request letter and other related materials.

Folder 2: Case Chronology Log, Correspondence and Meeting Notes. This folder contains all emails and other correspondence, both internal and external, as well as meeting notes associated

[16] See Appendix A-3 – Index for a Supply and Service Review.

with the review. File these items chronologically. COs must preserve all communications related to the compliance evaluation or complaint investigation in this folder, including data and record submissions, information gathering and interviews, and any material resulting from contacts with third parties such as other government agencies or local interest groups.

For ease of reference, the folder must have a tab for the closure document. One closure document is a CA. This document is the written agreement entered into by the contractor and OFCCP that identifies the violations found by the agency and what actions the contractor will undertake to resolve them or prevent the violations from recurring. In the absence of violations, a closure letter is the closure document. Place a copy of the closure document in Folder 6, Historical Review Results.

COs must attach a typed copy of the Case Chronology Log to the left side of this folder.

Folder 3: Collective Bargaining and Other Agreements, and Miscellaneous Items. This folder contains a copy of any collective bargaining agreements, fringe benefits and leave policy booklets, employee handbooks, apprenticeship or training agreements and any other similar contractor documents relevant to the establishment reviewed. COs place into this folder relevant documents that do not fit the description of documents contained in other folders.

Folder 4: SOL Opinions, JRC Memoranda and Post-SCER Update. This folder contains Solicitor's Opinions and JRC memoranda associated with the review. It also contains any material, other than progress reports, generated after a CO submits the review report such as transmittal memoranda and additional conciliation efforts. For example, a record of any later conciliation efforts by the district office, regional office and national office, as appropriate, along with the results of those efforts, would be filed in this folder.

Folder 5: Progress Reports. This folder contains progress reports the contractor submitted under a CA, along with OFCCP's evaluation of those reports. COs enter the results of these evaluations on the "Summary of Progress Reports" form. After entering the last report, COs place a copy of the referenced summary in Folder 6, Historical Review Results. COs also log all progress reports in the Case Chronology Log and include consent decrees or other court orders.

Folder 6: Historical Review Results. This folder contains a copy of closure letters and documents, including any previous CAs generated by any past reviews of this establishment, as well as a copy of the closure letter and document for the current review. If a contractor must file progress reports under a current CA, when the CO evaluates the last report, the CO will add a copy of the "Summary of Progress Reports" to this folder on top of the CA for the current review.

It is important that the field office retains the historical folder consistent with OFCCP's records management schedule. If OFCCP schedules another review of this establishment before this case file is retired and archived, the field office will pull the historical folder from the old case file and move it to the new one.

Folder 7: AAP and Itemized Listing Data. This folder contains the contractor's AAPs and Itemized Listing data evaluated in this review. Place this material at the end only because it is often the most voluminous.

1B03 SENDING THE SCHEDULING LETTER AND ITEMIZED LISTING

OFCCP uses the Scheduling Letter and Itemized Listing to schedule a compliance evaluation and request AAPs and Itemized Listing data from the contractor.[17] The Scheduling Letter and Itemized Listing are reauthorized for the agency's use every three years by the Office of Management and Budget (OMB) if not earlier, should the agency seek it. Therefore, COs must review the most recently authorized Scheduling Letter and Itemized Listing to ensure that they are familiar with the documents and information requested from the contractor.

COs will use a separate version of the Scheduling Letter and Itemized Listing for a focused review. For example, the Scheduling Letter and Itemized Listing for Section 503 focused reviews is in Figure F-4.

The most recently OMB-approved Scheduling Letter and Itemized Listing is sent by certified mail, return receipt requested, to the highest ranking official at the contractor's establishment or functional unit, with a copy to the CEO at the contractor's corporate headquarters unless the establishment and corporate headquarters are the same. The appropriate field office official signs the Scheduling Letter. The letter must include the name and telephone number of the CO who will receive the AAPs, and Itemized Listing data or the CO's appropriate supervisor.

1B04 FOLLOW-UP CONTACT WITH CONTRACTOR AND JURISDICTION CHALLENGES

COs must contact the contractor within 15 calendar days after sending the Scheduling Letter and Itemized Listing to ensure that the contractor or the contractor's representative, or both, fully understand the requests contained in the letter. If the contractor has questions, COs will provide technical assistance to clarify the contractor's obligations and the compliance evaluation process. The CO should establish himself or herself as the primary point of contact for the compliance evaluation, provide an overview of what to expect during the evaluation, and explain the allowable one-time 30-day extension for submission of Itemized Listing[18] information as well as the SCN process for failure to meet deadlines for submitting the AAPs and Itemized Listing information.

The contractor may challenge OFCCP's authority to schedule it for a compliance evaluation. For instance, the contractor could assert that the establishment is closed, the establishment is part of an approved FAAP agreement, or it does not have a large enough federal contract or the requisite number of employees to trigger OFCCP's AAP requirements. The contractor might also inform the CO that it has been less than 24 months since it received a closure letter from OFCCP for a prior compliance evaluation or since the end of the monitoring period for a CA or consent decree it entered with OFCCP to remedy violations uncovered during a prior evaluation.

---

[17] See Figure F-3 – Scheduling Letter and Itemized Listing.

[18] See Directive 2018-08, "Transparency in OFCCP Compliance Activities." OFCCP will provide a 30-day extension for contractors to provide supporting data related to the Executive Order 11246, VEVRAA and Section 503 AAPs, provided that: 1) the contractor requests the extension any time before the initial 30-day due date for the AAPs and 2) the contractor timely submits the basic Executive Order 11246, Section 503 and VEVRAA AAPs within the initial 30-day period after receiving the Scheduling Letter and Itemized Listing.

If the contractor challenges the agency's jurisdiction for any reason, the CO must elevate the issue to the attention of DPO, in coordination with his or her supervisor and regional office. DPO will use a number of resources, including the System for Award Management (SAM),[19] to verify whether OFCCP has jurisdiction over the scheduled contractor. If jurisdiction is then established, yet the contractor continues to dispute OFCCP's jurisdiction, the CO will recommend issuance of an SCN. Chapter 8, Section D explains the use of SCNs. If jurisdiction is not established, then the CO would administratively close the compliance evaluation.[20]

SAM includes information on whether a contractor has declared that it maintains AAPs for all of its establishments. The information is under Representations and Certifications; Affirmative Action Compliance (Federal Acquisition Regulation 52.222-25). COs may find it beneficial to check SAM to determine whether the contractor made this declaration in SAM before making the 15-day call.

If a region schedules a compliance evaluation of an establishment that is covered by a functional or business unit, the regional office and CO must contact the FAAP branch to verify if the establishment is covered within an approved functional or business unit. The FAAP branch will advise the regional office and CO whether to administratively close the evaluation.

1B05 CONTACTING EEOC, VETS AND OTHER AGENCIES

Simultaneous with the mailing of the Scheduling Letter, COs will seek information regarding the employment policies and practices of the contractor being scheduled from the Equal Employment Opportunity Commission (EEOC), Veterans Employment and Training Service (VETS), and other EEO and labor law enforcement agencies. Such information provides a better understanding of the contractor's workforce and operations, and may indicate potential problem areas.

a. *EEOC and State and Local Fair Employment Practices (FEP) Agencies*. The CO sends an inquiry letter simultaneous with the mailing of the Scheduling Letter.[21] The inquiry letter goes to the appropriate district office of the EEOC, and to the appropriate state and local FEP agencies. It requests information on discrimination complaints filed against the contractor and any other information that may be pertinent to assessing the contractor's EEO posture. After 15 calendar days, COs must follow up by telephone with any agency that failed to respond or from which additional information is needed.

   OFCCP has a Memorandum of Understanding (MOU) with EEOC that includes provisions about information sharing, complaint referrals, coordination and consultation. COs are urged to become familiar with the provisions of this MOU.

b. *Veterans Employment and Training Service, Employment Service Delivery System and DOL Enforcement Agencies*. COs must contact the VETS regional office and local employment service delivery systems (ESDS) in writing to request any information that could be pertinent to the pending review, including information regarding the contractor's compliance with the mandatory job listing requirements of the equal opportunity clause at 41 CFR 60-300.5(a), and

---

[19] The System for Award Management is located at *https://www.sam.gov/* (last accessed August 2019). For OFCCP's current jurisdictional thresholds, see *https://www.dol.gov/ofccp/taguides/jurisdiction.htm* (last accessed August 2019).

[20] Letter L-1 – Sample Administrative Closure Letter.

[21] Letter L-2 – Sample Inquiry Letter for Requesting Complaint Data from EEOC and State and Local FEPs.

complaints.[22] When conducting compliance evaluations and complaint investigations, COs must query the VETS-4212 database online to verify that a federal contractor completed the annual reporting requirements for the appropriate reporting year. COs must then record the results of these inquiries in Part B.I of the SCER. Moreover, the information in this database, in combination with data provided under 41 CFR 60-300.44(k), may be useful when analyzing an employer's recruitment and hiring practices. OFCCP provides a periodic report to VETS of contractors who have not filed the VETS-4212.[23]

Additionally, COs should check the DOL Enforcement Database at https://enforcedata.dol.gov/ for closed complaints and compliance evaluations of the contractor's establishment, and may reach out to other DOL agencies such as the Wage and Hour Division (WHD) or the Occupational Safety and Health Administration (OSHA) for information on the compliance history of the establishment. For example, the WHD may have filed Family and Medical Leave Act (FMLA) violations related to the contractor that is the subject of a compliance evaluation.

1B06 INFORMATION ON COMPLAINTS FILED WITH OR BY OTHER AGENCIES

COs must carefully examine all information regarding EEO complaints against a contractor that they receive from federal, state, and local agencies in response to a letter of inquiry. COs enter basic information about these complaints in Part A of the SCER, including:

- The agency with which the complaint was filed;
- The jurisdictional or legal basis (*e.g.,* race, sex) of the complaint;
- The current status of the complaint; and
- The area of the contractor's workforce involved in the complaint.

COs will note any patterns in the types of complaints filed and any discrimination findings made on them. For example, there may be a clustering of complaints filed by employees in certain job areas, or by applicants or employees from a particular race, religion, ethnic group or sex; by covered veterans; or by individuals with disabilities. As the review progresses, COs must cross-reference complaints to any potential problem areas they identify. There may be, for example, indications of a lack of good faith efforts, statistical indicators of discrimination, or concentration or underrepresentation in areas where complaints were filed.

When appropriate, COs will contact the appropriate EEOC office or state or local FEP agency to arrange the review of relevant discrimination complaint files as part of the compliance evaluation. This review can be particularly useful when, based on the result of the desk audit, a CO identifies potential systemic problems in complaint areas.

---

[22] Sample letters are in this Manual, including Letter L-3, Sample Letter For Requesting Job Listing From Employment Service Delivery Systems, and L-4, Sample Inquiry Letter for Requesting Information on Pending Review from Veterans Employment and Training Service.

[23] 41 CFR 60-300.60(c).

Upon receipt of the AAPs and Itemized Listing data, COs must compare any information a contractor provides concerning current or past complaints to the information received from other agencies. COs will note discrepancies and information not provided by the contractor for possible further investigation during the review, and will seek an explanation and additional information from the contractor.

1B07 RELATIONSHIP OF OFCCP COMPLIANCE ACTIVITIES TO LITIGATION OR COURT ORDERS

If, during the conduct of a compliance evaluation, a CO finds that the contractor is involved in litigation or is under a court order on EEO matters, then the CO must identify:

- The EEO issues involved;
- The court and the parties; and
- The case name and number.

The CO must bring the matter to the attention of his or her supervisor. The field office, in consultation with the regional Solicitor of Labor (RSOL), will determine whether the litigation or court order imposes limitations on the compliance evaluation.

1B08 REVIEW OF COMMUNITY RESOURCE FILES

Each field office must maintain resource files on the communities within its geographic area. For each community, these files should identify local organizations that represent or provide services to protected groups. These entities would include groups and organizations representing or servicing women, racial and ethnic minorities, veterans, individuals with disabilities, and individuals who identify as lesbian, gay, bisexual, or transgender. Some COs may not be knowledgeable about the local organizations in the area. In these instances, the COs must review the resource files and introduce themselves to representatives from the various organizations. The Communications Team in the national office and Regional Office Outreach Coordinators (ROCs) may also be useful resources.

If a contractor is located near an Indian and Native American Reservation with a Tribal Employment Rights Organization (TERO) or other employment organization on the reservation, COs must contact these organizations. Chapter 2 of this Manual discusses the importance of linkages and how a CO can establish relationships with local organizations representing covered group members.

1B09 REVIEW OF PREVIOUS COMPLIANCE ACTIONS

COs must determine whether another OFCCP office recently reviewed or is reviewing the same contractor when scheduling contractor establishments for compliance evaluations. If another OFCCP office is currently reviewing a contractor proposed for an evaluation, the CO or the supervisor must contact the supervisor of the other OFCCP office to discuss what issues, if any, are present in their ongoing case. This is particularly important for detecting company-wide practices

that result in discrimination. An example of this issue may be a test that is not validated and has an adverse impact on specific groups.

COs may also examine closed case files or OFIS to identify issues relevant to the current evaluation. COs should also note the terms of any CA or consent decree, including back pay, hires and other remedial measures contained in the CA or consent decree. In addition, COs must determine whether a contractor has been subject to an OFCCP complaint investigation and, if so, review the complaint file for any violations or problems identified.[24] Any violations found in these past compliance actions must be recorded in Part A of the SCER. While the existence of a past problem is not considered evidence of the existence of present problems, COs must be alert to any indications that past problems remain unresolved, have recurred or that similar problems have arisen.

1C RECEIPT OF AAPs AND ITEMIZED LISTING DATA FOR DESK AUDIT

The desk audit begins with receipt of the AAP(s). The appropriate field office should receive copies of a contractor's current Executive Order 11246 AAP within 30 calendar days of the contractor's receipt of the Scheduling Letter and Itemized Listing. The office should also receive separate or combined AAPs for Section 503 and VEVRAA within this same timeframe.[25] If the field office does not receive the current AAPs or Itemized Listing information within this timeframe, the CO must call the contractor to determine the status.

1C00 NONRECEIPT OF AAPs

If the contractor fails to request an extension, if the request is denied, or if the contractor fails to submit any of the AAPs it is required to maintain within the established timeframe, the CO must recommend issuance of an SCN. The CO's supervisor has the discretion only under extraordinary circumstances to grant the contractor a reasonable extension if the contractor does not submit the AAPs on time. This discretion should be exercised within the parameters set by the national office.[26] Additionally, the regulations at 41 CFR 60-1.26(b)(1), 60-300.65, and 60-741.65 give the director of OFCCP the discretion to immediately refer the matter to the Solicitor for administrative enforcement when a contractor refuses to submit an AAP and efforts to conciliate the matter are unsuccessful.

1C01 NONRECEIPT OF ITEMIZED LISTING DATA

If, in response to the Scheduling Letter and Itemized Listing, a contractor does not meet its deadline to submit all the Itemized Listing records requested, including employment activity data, the CO must immediately begin the process to issue an SCN.[27] This process also applies to contractors who receive the one-time, 30-day extension for submitting Itemized Listing information explained in 1B04. Examples of incomplete information include not submitting data for one or more personnel

---

[24] See subsection 1B06 – Information on EEO Complaints Filed with or by Other Agencies.

[25] The contractor has the option to prepare a combined Section 503 and VEVRAA AAP or to prepare separate Section 503 and VEVRAA AAPs.

[26] See Directive 2018-08, "Transparency in OFCCP Compliance Activities."

[27] Procedures for issuing an SCN are in Chapter 8 – Resolution of Noncompliance.

activity elements, such as applicant flow, hires, compensation, promotions or terminations. As with all correspondence, conversations, emails, or other communication, this contact must be meticulously recorded in the Case Chronology Log, in the event OFCCP goes to litigation.

1C02 REGULATORY CITATIONS FOR RECORDKEEPING

If a contractor fails to submit data because it did not maintain appropriate records, one or more of the following regulatory sections may be applicable for COs to cite in the SCN or other closure document.

- Executive Order 11246 Recordkeeping and Related Requirements, 41 CFR 60-1.12 and 60-2.17(b) and 60-2.17(d). These two sections set forth requirements that necessitate recordkeeping of employment and personnel records.
    - Section 60-1.12 sets forth the required document retention periods and identification requirements for all employment and personnel records and AAPs. Generally, a contractor must retain these records for two years unless it has less than 150 employees or does not have a federal contract of at least $150,000, in which case the period is one year.
    - Section 60-2.17(b) requires that an AAP identify problem areas and Section 60-2.17(d) requires that an AAP include internal audit and reporting systems. COs may cite these requirements in conjunction with recordkeeping violations because they cannot be appropriately implemented without maintaining and analyzing basic data on employment activity as required by 41 CFR 60-3.4 and 60-3.15.
    - General Data Requirements under the Uniform Guidelines on Employee Selection Procedures (UGESP), 41 CFR Part 60-3. These guidelines were designed to provide a framework for determining the proper use of tests and other selection procedures used as a basis for employment decisions. Section 60-3.4 requires contractors to maintain records that show the impact such selection procedures have on the employment opportunities of persons by identifiable race, sex, and ethnic groups. The race and ethnic groups are defined by 41 CFR 60-3.4B as Black, Hispanic, Asian, American Indian, and White other than Hispanic. However, OFCCP also permits contractors to keep their records concerning impact by using the race and ethnic categories on the Equal Employment Opportunity Standard Form 100, Employer Information Report EEO-1 series (EEO-1 report).
        i. *Recordkeeping Requirements under UGESP for Contractors with 100 or More Employees*. 41 CFR 60-3.15A(2) requires contractors with 100 or more employees to maintain and have available records or other information for each job showing whether the total selection process for that job has an adverse impact based on race, sex, or ethnic group as defined by 41 CFR 3.5B, described above. Contractors must have records on adverse impact determinations for each protected group that constitutes at least 2% of the labor force in the relevant labor area or 2% of the applicable workforce. Where the total selection process has an adverse impact, the CO may request validity evidence for each component of that process which has an

adverse impact. Different types of validity evidence that may be maintained by contractors are explained in 41 CFR 60-3.15A(3).

ii. *Recordkeeping Requirements under UGESP for Contractors with less than 100 Employees*. 41 CFR 60-3.15 A(1) requires contractors with less than 100 employees to maintain and have available records for each job on all applicants, hires, promotions, terminations and any other selection decisions by sex and, where appropriate, by race and national origin. Contractors should maintain these records for any race or national origin group constituting more than 2% of the labor force in the relevant labor area. However, it is not necessary to maintain records by race and national origin if one race or national origin group in the relevant labor area constitutes more than 98% of the labor force in that area. If a CO has reason to believe a contractor's selection procedure has an adverse impact, the CO may request evidence of validity for that procedure.

- Section 503 Recordkeeping Requirements, 41 CFR 60-741.80, 60-741.44(f)(4) and 60-741.44(k). Section 60-741.80 provides the general recordkeeping requirements for Section 503 while Sections 60-741.44 (f)(4) and (k) explain the retention requirements for the assessment of external outreach and recruitment efforts, and the data collection analysis, respectively.

  - Section 60-741.80 sets forth the required document retention periods and identification requirements for all employment and personnel records, including, but not limited to, hires, requests for reasonable accommodation, terminations, the results of any physical examination, post-offer invitations to self-identify and any subsequent invitations to employees to self-identify. Generally, a contractor must retain these records for two years, unless it has fewer than 150 employees or does not have a federal contract of at least $150,000, in which case the period is one year.

  - Sections 60-741.44(f)(4) and (k) require contractors to maintain certain records for three years. Such records include documentation of all activities contractors undertake to disseminate their affirmative action policies externally, and to conduct and assess outreach and positive recruitment. The three-year retention period also applies to documentation of the computations and comparisons performed by contractors to analyze applicant and hire data for individuals with disabilities.

- VEVRAA Recordkeeping Requirements, 41 CFR 60-300.80, 60-300.44(f)(4), 60-300.44(k), and 60-300.45(c). Section 60-300.80 provides the general recordkeeping requirements for VEVRAA while Sections 60-300.44(f)(4) and (k) explain requirements for external outreach and recruitment efforts, and the data collection analysis, respectively. Finally, Section 60-300.45(c) provides the requirement for documenting the annual VEVRAA hiring benchmark.

  - Section 60-300.80 sets forth the required document retention periods and identification requirements for all employment and personnel records, including, but not limited to, hires, requests for reasonable accommodation, terminations, results of any physical examination, and post-offer invitations to self-identify. Generally, a contractor must

retain these records for two years unless it has fewer than 150 employees or does not have a federal contract of at least $150,000, in which case the period is one year.

- Sections 60-300.44(f)(4) and (k) require contractors to maintain certain records for three years. Such records include documentation of all activities contractors undertake to disseminate their affirmative action policies externally and to conduct and assess outreach and positive recruitment. The three-year retention period also applies to documentation of the computations and comparisons performed by contractors to analyze applicant and hire data on protected veterans, including data gathered from invitations to self-identify for applicants and those applicants who have been hired.

- Section 60-300.45(c) requires contractors to document the hiring benchmark that they establish each year, along with the factors they considered and their relative significance, and to retain the documentation for three years. In reviewing this documentation, the CO must determine whether the contractor used the five-factor method for establishing the VEVRAA hiring benchmark or if the contractor set its benchmark to equal the national percentage of veterans in the civilian labor force. If the contractor used the five-factor method, the CO must examine the relative significance of each factor considered by the contractor in setting its benchmark.

1C03 EVALUATION PERIOD

COs must evaluate the contractor's AAPs and Itemized Listing data for at least the last full AAP year. COs must also examine the current year data if the contractor is six months or more into its current AAP year. For current year data of six months or more, the CO must examine the underlying records if the contractor cannot or has not yet computed the data. For example, if the contractor establishes its AAPs on a calendar year basis (January – December) and the compliance evaluation is scheduled in August, a CO would evaluate the contractor's data from January through December of the prior year. In addition, the CO would examine the data or underlying records at least from January through June of the current year.

1C04 ADDITIONAL DATA REQUESTS

A CO should not request any supplemental data during the desk audit after the contractor has responded to the Scheduling Letter and Itemized Listing <u>unless</u>:

- The contractor's submission is incomplete; or
- The CO needs to clarify information provided by the contractor for the desk audit.

If the contractor does not make a complete submission in response to the Scheduling Letter and Itemized Listing,[28] then the CO must follow the procedures in 1C00 or 1C01, as appropriate.

The CO may find an indicator of discrimination at desk audit and need to request additional data to perform refined analysis before going on-site. This supplemental records request must include the

[28] FCCM 1E discusses what must be included in the contractor's submission. FCCM 1F, 1G and 1H explain how to evaluate whether the content submitted is acceptable.

basis for the request, be reasonably tailored to the areas of concern, and allow for a reasonable time to respond.

Special circumstances or exceptions may also exist that warrant a CO extending the analysis of a contractor's AAPs, personnel activity, policy implementation and supporting documentation to cover a period beginning two years before the date the contractor received the Scheduling Letter. The appearance of potential discrimination and missing records are examples of such special circumstances or exceptions. To fully investigate and understand the scope of potential violations, the CO may also need to examine records created after the date of the Scheduling Letter to determine, for example, if indicators of these potential violations appear or whether the situation or factors resulting in the indicators have been remedied. This assumes, however, that the CO, in conjunction with DPO, can establish coverage for the entire period. If the CO believes it is necessary to request information related to periods after the date of the Scheduling Letter, the CO must discuss the issue with his or her supervisors. The CO will request data relevant to the potential discrimination issues identified at the desk audit to determine how far into the evaluation period the violation extends and whether the violation continues to the present day. This information is necessary to ensure that any discriminatory practices have ended and to ensure that all victims of discrimination receive appropriate remedies.

1D REVIEW OF AAPs: OVERVIEW

After receiving a contractor's AAPs and Itemized Listing data, COs must ensure that they are complete and acceptable. There are three types of determinations that a CO must make: inclusion, missing items, and acceptability; each is described below.

- *Inclusion*. Immediately review the material to ensure that the contractor provided all of the materials identified in the Scheduling Letter and accompanying Itemized Listing. Figure F-3 contains the current Scheduling Letter and Itemized Listing.

- *Missing Items*. Create an inventory list of every document that the contractor provided, including the date requested, if any, and date received. Also record on the list the items requested but not provided by the contractor.

- *Acceptability*. Determine whether the AAPs and Itemized Listing data are current, complete and acceptable.

The results of this initial review for inclusion and acceptability, as outlined below in sections 1E through 1H, are documented on Part B.I of the SCER. Each specific problem a CO identifies is described in Part B.II of the SCER, along with the corrective actions the CO plans to take to resolve them. To minimize duplication of work as well as the time it takes to complete a desk audit, COs should begin to analyze supporting data only after determining that the AAPs and supporting data are complete and acceptable.

1E REVIEW OF ALL AAPs AND ITEMIZED LISTING DATA TO ENSURE SUBMISSIONS INCLUDE REQUIRED CONTENT

This Section covers CO actions and responses when AAPs and Itemized Listing submissions are not current or are missing information requested in the Scheduling Letter and Itemized Listing. The first subsection, 1E00, is devoted to AAPs that are not current while 1E01 and 1E02 cover the issue of inclusion and the actions that can be taken when AAP submissions are missing data. Subsection 1E03 discusses the review of Itemized Listing data to ensure all required data is included in the contractor's submission.

1E00 ACTION WHEN AAP IS NOT CURRENT

After receiving the desk audit submission, a CO first determines whether the AAP is current, that is, whether the AAP was effective as of the date of the Scheduling Letter. If it is not, the CO will contact the contractor and request immediate submission of the current AAP. If the contractor fails to submit the AAP, the CO must recommend the issuance of an SCN.[29]

1E01 INCLUSION

If the contractor's AAPs are current, the CO will review the AAPs and Itemized Listing data to determine whether the contractor's submissions include all requested information. To do so, the CO must first determine whether the contractor submitted all materials requested in the Scheduling Letter and Itemized Listing. Next, the CO must determine if the AAPs contain all the elements required by the regulations.

The elements of the required Executive Order AAP are listed in 41 CFR 60-2.10(b) while the required contents of Section 503 and VEVRAA AAPs are found in 41 CFR 60-741.44 and 60-300.44, respectively.

1E02 MISSING AAP ELEMENTS

Actions that must be taken when an AAP is missing or inadequate under the legal authorities enforced by OFCCP are discussed in this subsection. First is the discussion of the Executive Order AAP, followed by AAPs under Section 503 and VEVRAA.

a. Executive Order AAP. If one or more of the below listed Executive Order AAP elements is missing, COs must automatically consider the submission unacceptable.

- Organizational Profile (workforce analysis or organizational display);
- Job group analysis, including a list of the job titles that compose each job group;
- The percentage of minorities and the percentage of women employed in each job group;

[29] See Chapter 8, Section D.

- Utilization analysis, including its component parts of job group formation, availability estimates and, as appropriate, identification of underutilization;
- Comparison of incumbency to availability;
- Placement goals at least equal to the availability figure derived for women or minorities, as appropriate for job groups where the number of minorities or women employed is less than would be reasonably expected, given their availability;
- Designation of a responsible official;
- Identification of problem areas;
- Action-oriented programs designed to correct any problem areas; or
- Internal audit and reporting system.

A CO must contact the contractor and request that it immediately provide the information. The CO should also provide the contractor with compliance assistance, if needed. If the contractor does not comply, the CO must suspend the desk audit and recommend the issuance of an SCN. If the contractor includes all of these elements, the CO will then evaluate them for acceptability.

b. Section 503 AAP and Utilization Goal. If one or more of the below listed Section 503 AAP and utilization goal elements is missing, COs must automatically consider the submission unacceptable.

- Equal employment opportunity policy statement;
- Review of personnel processes to ensure careful, thorough and systematic consideration of individuals with disabilities for job vacancies, promotion and training opportunities;
- Schedule for the periodic assessment of physical and mental job qualifications, to the extent they screen out individuals with disabilities, to ensure they are job-related and consistent with business necessity;
- Reasonable accommodation to physical and mental limitations, including copies of any reasonable accommodation policies, and documentation of any accommodation requests received and their resolution;
- Procedures to ensure that employees are not harassed on the basis of disability;
- External dissemination of the contractor's EEO policy;
- Description of outreach and positive recruitment efforts, and annual assessment from the evaluation of the effectiveness of those efforts;
- Internal dissemination of the contractor's EEO policy;

- Description of the contractor's audit and reporting system, including documentation of all actions taken to comply with the audit and reporting system requirements;
- Designation of responsible official;
- Policy to train all personnel involved in the recruitment, screening, selection, promotion, disciplinary and related processes to ensure that the commitments in the contractor's AAP are implemented;
- Data collection on applicants and hires, including documentation of the computations or comparisons of applicant and hire data;
- Analysis of contractor's utilization of individuals with disabilities;
- Identification of problem areas; or
- Action-oriented programs designed to correct any problem areas.

A CO must contact the contractor and request that it immediately provides the missing information. The CO may provide the contractor with compliance assistance, if needed. If the contractor does not comply, the CO must suspend the desk audit and recommend the issuance of an SCN. If the contractor includes all of these elements, the CO will then evaluate them for acceptability.

c. *VEVRAA AAP and Hiring Benchmark*. If one or more of the below listed VEVRAA AAP and hiring benchmark elements is missing, COs must automatically consider the submission unacceptable.

- Equal employment opportunity policy statement;
- Review of personnel processes to ensure careful, thorough and systematic consideration of protected veterans for job vacancies, promotion and training opportunities;
- Schedule for the periodic review of physical and mental job qualifications to ensure they are job-related and consistent with business necessity;
- Reasonable accommodation to physical and mental limitations;
- Procedures to ensure that employees are not harassed because of their status as a protected veteran;
- External dissemination of the contractor's EEO policy;
- Description of outreach and positive recruitment efforts, and results from the evaluation of the effectiveness of those efforts;
- Internal dissemination of the contractor's EEO policy;

- Description of the contractor's audit and reporting system, including documentation of all actions taken to comply with the audit and reporting system requirements;
- Designation of responsible official;
- Policy to train all personnel involved in the recruitment, screening, selection, promotion, disciplinary and related processes to ensure that the commitments in the contractor's AAP are implemented;
- Data collection on applicants and hires, including documentation of the computations or comparisons of applicant and hire data; or
- Documentation of the annual hiring benchmark established by the contractor.

A CO must contact the contractor to request that the contractor provide any missing elements immediately. The CO should provide the contractor with compliance assistance, if needed. If the contractor does not comply, the CO must suspend the desk audit and recommend issuance of an SCN. If the contractor included all of these elements, the CO will then evaluate them for acceptability.

1E03 MISSING ITEMIZED LISTING DATA

The Itemized Listing requests various data related to all three of OFCCP's legal authorities with varying time parameters. For instance, contractors are required to submit the last three years of their Employer Information Reports (EEO-1 reports). For employment activity data, including employee-level compensation data, they are required to submit the data only for the immediately preceding AAP year unless they are at least six months or more into their current AAP year, in which case they would submit the current AAP year data or the underlying records if the contractor cannot or has not computed the current year data as well. The Itemized Listing must be reauthorized by OMB at least every three years, so it is subject to change. Figure F-3 contains the current Itemized Listing.

As explained in subsection 1C01, the CO must recommend the issuance of an SCN if the contractor fails to submit Itemized Listing data. After confirming receipt of the Itemized Listing data, the CO must ensure that the submission is complete. If one or more of the items is missing, the CO considers the submission incomplete. A CO must contact the contractor to request any missing items immediately and should provide the contractor with compliance assistance if needed. If the contractor does not comply, the CO must suspend the desk audit and recommend the issuance of an SCN. If the contractor included all of the items, the CO will then evaluate them for acceptability.

1F REVIEW OF AN EXECUTIVE ORDER AAP AND ITEMIZED LISTING DATA FOR ACCEPTABILITY

The next three sections discuss a CO's review of a contractor's AAPs for acceptability. Because the requirements for acceptability are not the same under all of the laws that OFCCP enforces, the acceptability requirements for the Executive Order AAP, Section 503 AAP and VEVRAA AAP are reviewed separately. FCCM section 1F reviews the acceptability requirements for the Executive

Order AAP and Itemized Listing data. Section 1G discusses the acceptability requirements for the Section 503 AAP and Itemized Listing data, and section 1H discusses the acceptability requirements for the VEVRAA AAP and Itemized Listing data.

The regulations at 41 CFR 60-2.10 through 60-2.17 list the required elements of an Executive Order AAP and specify what a contractor must include in a written AAP. Once a CO determines that the contractor's submission includes the elements necessary to proceed with the desk audit, the desk audit proceeds with an evaluation of the acceptability of each required element. Specifically, the CO examines the AAP to determine if the information the contractor provided in each element is sufficient to satisfy the regulatory requirements. The determination of the *acceptability* of the items listed in Part B.II of the SCER is limited to the evaluation that the CO can conduct during the desk audit. The CO may identify items in the part of the SCER that need further review on-site. This process is different from an evaluation of a contractor's *implementation* of its AAP and regulatory requirements which, in most instances, the CO cannot determine without further investigation on-site. On-site reviews are discussed in Chapter 2.

We address the acceptability assessment of each required element below.

1F00 ORGANIZATIONAL PROFILE

An organizational profile is a depiction of the staffing pattern within an establishment. Contractors must use either a workforce analysis or an organizational display as its organizational profile.

a. Workforce Analysis. Under 41 CFR 60-2.11(c), a workforce analysis is acceptable if it:

- Contains a listing of each job title as it appears in applicable collective bargaining agreements or payroll records within each department or other similar organizational unit including the unit supervisor, ranked from the lowest-paid to highest-paid (or highest to lowest); and

- Provides a separate listing for each work unit or line of progression including the unit supervisor when there are separate work units or lines of progression within the department or organizational unit.

In addition, the workforce analysis must include information by job title, wage rate, department and/or organizational unit and lines of progression. Below is a description of each of these elements.

- *Information by Job Title*. Each job title listed shows the total number of people in the job title, the total number of men and women, and the total number of men and women in each of the races and ethnic groups identified in 41 CFR 60-2.11 or in the current EEO-1 report.[30] The list must include all job titles, including managerial job titles. Upper management positions located in the establishment must be included in an establishment's workforce

[30] See OFCCP Directive 2008-02, "Federal contractors' obligation to maintain and analyze the race and ethnicity data of applicants and employees in Affirmative Action Programs prepared under Executive Order 11246, as amended." This guidance indicates that OFCCP will accept AAPs and supporting records that reflect the race, ethnicity and job categories outlined in either 41 CFR Part 60-2 or the current EEO-1 Report. Also, for purposes of complying with OFCCP requirements, contractors choosing to follow the current EEO-1 categories may count applicants and employees identifying as "two or more races" as minorities.

analysis, even though the managers may have been chosen by those outside the establishment and included for goal-setting purposes in a corporate or mid-level AAP.[31]

- *Wage Rate.* The wage rate or salary range for each job title must be provided, although this information may be coded. Titles must be listed from the lowest-paid to highest-paid. Contractors must provide the key to wage rate or salary range codes if they are used. The codes must be consistent across department or unit lines. For example, a job with a salary code 1157 in Department A pays the same as one coded 1157 in Department B. The codes must also be consistent in wage rate or salary range order within each department or other similar organization unit. Finally, the contractor's submission should include a list of the codes used in wage and salary order with the lowest and highest codes labeled appropriately.

- *Departments or Organizational Units*. The departments or organizational units, or both, used in the workforce analysis must be identifiable and should reflect the contractor's organizational structure. If the contractor provides an organizational chart as part of the supporting documentation, the CO will compare it to and match it with the units used in the workforce analysis.

- *Lines of Progression*. Lines of progression or usual promotional sequences show the order of jobs in the line through which an employee moves to reach the top of the line. Lines of progression or promotional sequences can be identified from collective bargaining agreements, as well as from organizational charts. If the CO determines that lines of progression exist but adequate information is not provided at the desk audit, the CO will contact the contractor to request a prompt submission of the information.

b. Organizational Display. An acceptable organizational display is one that meets the requirements of 41 CFR 60-2.11(b). It must contain the following elements for each unit:

- Name of the unit;

- Job title, gender, race and ethnicity of the unit supervisor (if the unit has a supervisor);

- Total number of male and female employees in the unit; and

- Total number of male and female employees by racial or ethnic groups.

1F01 JOB GROUPS

A job group analysis is acceptable if it meets the requirements of 41 CFR 60-2.12. Each job group must be a group of jobs and/or job titles within a particular establishment having similar content, wage rates and opportunities.

a. List of Titles in Each Group. In order for COs to assess job group acceptability, the AAP must include, for each job group, a listing of the job titles that make up that group. If a contractor did

[31] 41 CFR 60-2.11(c)(4).

not provide the lists, the CO must immediately contact the contractor and request that the lists be promptly provided for the desk audit.

b. *Criteria for Acceptability*. The following criteria are to be used in assessing the acceptability of job groups:

- *Similar Work Content*. Similarity of work "content" refers to the duties and responsibilities of the job titles that make up the job group.
  - *Appropriate EEO Category.* The CO will review the establishment's job titles that make up each of the job groups to verify they are within the proper EEO-1[32] job categories. Job titles in each job group must, as a general rule, be within the same EEO-1 job category.[33]
  - *Use of Occupational Information Network (O*NET).* The CO may refer to the U.S. Department of Labor's Employment and Training Administration's O*NET database, as well as collective bargaining agreements, organizational charts and other data provided by the contractor to evaluate how the contractor formulated its job groups. O*NET lists standard job titles for most positions and codes them based on their duties, requirements and other factors. O*NET also gives descriptions of job duties and commonly required qualifications.
- *Similar Rates of Pay*. COs must review pay rates in conjunction with job content. Large apparent differences in pay among job titles within a job group or different locations within an organization, or both, suggest an unacceptable job grouping. They may also indicate areas where compensation or job assignment practices need further review.
- *Similar Opportunities.* "Opportunity" refers to the ability to take advantage of training opportunities, transfers, promotions, mobility to desirable wage or salary situations and other employment benefits. Most often, it refers to upward mobility. Ideally, each job within a job group should offer the same opportunities as any other job within that job group.
  - *Jobs in Separate Unions.* Jobs groups should not group together jobs from separate unions or jobs from different departments where interdepartmental mobility is not available. For example, job groups should not normally group together nonunion clerical jobs and clerical jobs that are covered by a collective bargaining agreement.
  - *Jobs in Lines of Progression.* Contractors should separate jobs that are in lines of progression from those that are not. When transferring or hiring into jobs above entry level is rare, COs must analyze each line of progression separately. When there are lines of progression governed by strict seniority, the contractor should consider the job titles in the progression as a single job group.

---

[32] Higher education institutions are required to submit the IPEDS.

[33] Contractors that employ fewer than 150 employees are permitted to use the job categories listed in OFCCP's regulations or the current EEO-1 job categories which subdivide the Officials and Managers category into two categories: Executive/Senior Level Officials & Managers, and First/Mid-Level Officials & Managers.

c. *Job Groups Must Not Obscure Underutilization*. Job groups that combine jobs with different content, wages or opportunities may obscure underutilization and OFCCP does not accept them.

d. *Effect of Size of Contractor's Workforce*. While assessing the acceptability of a contractor's job groups, COs must remember that the size of the contractor's workforce is a major factor in determining how well the contractor meets the three criteria for the acceptability of job groups.

- *Job Groups Must Permit Meaningful Analyses*. Job groups should have enough incumbents to permit meaningful utilization analyses and goal setting. Optimally, when COs identify underutilization in a job group, the job group should be large enough so that a goal of at least one whole person can be established. No minimum size is established for this purpose because the goal is dependent on the size of the job group, and the percentage and the number of minorities or women already in the job group.

- *Job Groups Should Not Normally Cross EEO-1 Job Categories*. A contractor's job groups should not ordinarily cross EEO-1 job categories. This means, for example, that a job group should not consist of a mixture of job titles from the "Professional" category and the "Technicians" category. COs should note that larger contractor establishments may have multiple job groups that fall into the same EEO-1 job category. Also, COs should note that smaller establishments (fewer than 150 employees) may use the EEO-1 job categories as their job groups.

e. Relationship Between Job Groups and Availability. The organization of jobs into groups should allow contractors to tie specific jobs to availability statistics to assess the degree to which their workforce representation approximates availability.

1F02 EXECUTIVE ORDER UTILIZATION ANALYSIS

The utilization analysis is a series of separate but interrelated analyses COs use to identify whether a contractor employs minorities or women in the workforce at a rate that would be expected based upon their availability for employment. Contractors must perform a utilization analysis that includes the placement of the contractor's employees into job groups, the determination of the availability for the employment of minorities and women, and a comparison of their incumbency in the job groups to their availability. If a contractor's utilization analysis reveals the underutilization of minorities or women, or both, in any of the job groups, the contractor must establish placement goals designed to cure the underutilization.

a. *Placement of Incumbents in Job Groups*. Having combined the job titles for the job group analysis, the contractor must separately state the percentage of minorities and the percentage of women employed in each job group.

b. *Determining Availability*. After aggregating individual job titles into job groups, the contractor must determine the availability of women and minorities for those job groups. "Availability" is a percentage estimate of the women and minorities in the reasonable recruitment area who have the skills required to perform the jobs within the job groups compared to all. When determining availability, the contractor must separately determine the availability of minorities and women for each job group, and consider at least the following factors:

- The percentage of minorities and women with the requisite skills in the "reasonable recruitment area," sometimes referred to by COs as "external availability." We define "reasonable recruitment area" as the geographical area from which the contractor usually seeks, or reasonably could seek, workers to fill the positions in question. When selecting the reasonable recruitment area, the contractor must not select an area in such a way that it would exclude minorities or women. For each job group, the contractor must identify and provide a brief explanation of the rationale for the selection of that recruitment area.

- The contractor should utilize the most current and discrete statistical information available to derive availability figures (such as census data, data from local job service offices, colleges and other training institutions). When evaluating the contractor's availability information, COs must utilize the most recent EEO Tabulation (EEO Tab).[34]

- The percentage of minorities and women among those promotable, transferable or trainable within the contractor's organization, is sometimes referred to by COs as "internal availability." The contractor must not define the pool of promotable, transferable and trainable employees in such a way as to exclude minorities or women. For each job group, the contractor must identify the pool of promotable, transferable and trainable employees, and provide a brief explanation of the reason for the selection of that pool.

- Though not required, some contractors assign a percentage or "weight" for availability rates of employees recruited into the job group. For example, if there are several job titles in the job group, and the job titles have differing availability rates, the contractor may weight each job title differently when determining the availability for the job group as a whole. In that instance, the sum of the weighted availability estimates for all job titles in the job group must be the composite availability for the job group.[35] A contractor may also choose to determine availability by weighing the internal and external availability for a particular job group. In that example, the availability would be a sum of the external availability and internal availability rates.

c. *Comparing Incumbency to Availability*. The contractor must compare the utilization of minorities and women in each job group with their estimated availability, and identify job groups where the percentage employed is less than would be reasonably expected, given their availability.

We use the term "underutilization" to refer to the presence of fewer minorities or women in a particular job group than would reasonably be expected, given their availability. Contractors use a number of methods to determine whether the representation rates of minorities and women are lower than would reasonably be expected. Some contractors declare underutilization when

---

[34] The EEO Tab is a custom tabulation of demographic data about the civilian workforce compiled every five to 10 years by the U.S. Census Bureau. It is sponsored by a consortium of federal agencies consisting of OFCCP, the EEOC, the Department of Justice and the Office of Personnel Management. The EEO Tab is derived from American Community Survey (ACS) data, and includes information about the race, sex, ethnicity, age, educational attainment, earnings and citizenship status of individuals in the civilian workforce, by geography, occupation and industry. The current EEO Tab may be accessed on OFCCP's website, at *https://www.dol.gov/ofccp/regs/compliance/Census.html* (last accessed Oct. 2019).

[35] 41 CFR 60-2.14(g).

there is any difference between the availability percentage and the utilization percentage, while others conclude that underutilization exists when the number of minority or women incumbents in a particular job group is at least one whole person lower than the number predicted by the availability percentages. Other contractors use a general "80%" rule and declare underutilization only when the representation of minorities or women is less than 80%of availability (which is the expected representation). Still others test whether the difference between the actual and expected representation of minorities and women is statistically significant.

While contractors may choose any of these methods for comparing incumbency and availability, they must uniformly apply the same standard to all job groups, as appropriate. Occasionally, a different method may be more appropriate to determine underutilization. For example, in some instances it may not be reasonable for contractors to use the two standard deviation method. No matter the method used, the contractor should be able to explain why it selected that method. Contractors should not use more than one method so as to mask underutilization.

The contractor must establish a placement goal if the percentage of women or minorities, or both, employed in a specific job group is less than would be reasonably expected, given their availability percentage in that particular job group.

1F03 PLACEMENT GOALS

Regardless of the method employed to determine underutilization, the contractor must establish a placement goal for each job group where minorities or women, or both, are underutilized.[36] The placement goal established must be at least equal to the availability percentage of the underutilized minorities and women for the specific job group.[37] The contractor may establish a goal higher than required under the Executive Order. Placement goals are not rigid and are not quotas.

Contractors are generally required to set a single goal for all minorities when minorities as a whole are underutilized. However, in the event of a substantial disparity in the utilization of a particular minority group, or the utilization of men or women of a particular minority group, the contractor may be required to establish separate goals for those groups.[38]

1F04 ADDITIONAL REQUIRED ELEMENTS OF AN EXECUTIVE ORDER AAP

This subsection, focusing on 41 CFR 60-2.17, covers the designation of responsibility for the AAP, identification of problem areas, creation of action-oriented programs, reporting system and internal audit, and reviewing the results of the report.

a. *Designation of Responsibility*. Under 41 CFR 60-2.17(a), contractors must provide for the implementation of EEO obligations and the AAP by assigning responsibility and accountability to an official of the organization. These officials must have sufficient authority and resources, and must also have the support of, and access to, top management to ensure the effective implementation of the contractor's EEO obligations and AAP. To be acceptable, the AAP

[36] 41 CFR 60-2.15.
[37] 41 CFR 60-2.16(b).
[38] 41 CFR 60-2.16(d).

should contain, at a minimum, a narrative description of the positions or job titles, or both, that the contractor designates to direct or manage its AAP and a description of the incumbent's duties.

b. *Identification of Problem Areas*. 41 CFR 60-2.17(b) requires that contractors perform an in-depth analysis of their total employment process to determine whether or where impediments to EEO exist. They must evaluate the following.

- *Organizational Structure*. The contractor must examine its workforce by organizational unit and job group to determine whether there are problems of minority or female utilization, or of minority or female distribution.

- *Personnel Activity*. The contractor must examine applicant flow, hires, recruitment, referral, terminations, promotions, transfers and other personnel activities to determine whether there are selection and termination disparities.

- *Compensation*. The contractor must determine whether there are gender, race or ethnicity disparities in its compensation system.

- *Personnel Procedures*. The contractor must determine whether its selection, recruitment, referral, and other procedures result in disparities in the employment or advancement of minorities or women and their resulting pay.

- *Other Areas*. The contractor must evaluate any other areas that might affect the success of the AAP. Examples include seniority practices, leave policies, time off policies, policies regarding part-time work, the conduct of company-sponsored social events, apprenticeship program practices, workforce environment, and compliance with posting and union notification requirements.

c. *Action-Oriented Programs*. 41 CFR 60-2.17(c) requires that contractors develop and execute action-oriented programs designed to correct problem areas and to attain established goals and objectives. To be effective, contractors must ensure that their action-oriented programs consist of more than following the same procedures that previously produced inadequate results. Action-oriented programs should be "specific" and "result-oriented."

By "specific," OFCCP requires that the programs describe in some detail what action the contractor will take, who is responsible for taking the action and when the action will be accomplished. "Result-oriented" programs are those where proper execution of the program will likely lead to an increase in minority or female participation, or both, in the department, job group, training program or other identified problem area. The action-oriented programs must be sufficient, if successfully implemented, to achieve their stated objectives. Contractors must describe these programs in the AAP.

For example, if a contractor identifies a lack of women in a job as a problem area, the contractor should also identify the reasons for the absence of women. The reasons identified could include the rigid work hours, the impact or application of leave policies, the lack of recruitment, the lack of training, the absence of a career path or ladder leading to the job, a working environment hostile to women or hiring discrimination. To remedy an identified problem area, the contractor

should establish action-oriented programs to eliminate or minimize the reasons women are adversely affected. The action-oriented programs, when fully implemented, should result in an increase in the representation of women in the job identified as a problem area.

d. *Internal Audit and Reporting System*. 41 CFR 60-2.17(d) requires contractors to design and implement an internal auditing system that periodically measures the effectiveness of its total AAP. This system must be detailed in the AAP, and the internal audit and reporting system must:

- *Monitor Records*. The internal audit and reporting system must monitor records of all personnel activity, including referrals, placements, transfers, promotions, terminations and compensation, at all levels.

- *Require Internal Reporting*. The contractor produces an internal report on the effectiveness of the AAPs on a regularly scheduled basis. While the regulations do not specify a particular time period, the reports must be produced on a scheduled basis.

- *Review Report Results*. Top management is advised of the program's effectiveness and any deficiencies, and management at all levels reviews the results of these reports.

The AAP should contain a narrative description of every aspect of the internal audit and reporting system. This description should specify the frequency of reports and audits. It should also state that, as problems are discovered, the contractor is taking the necessary corrective actions. The description should also designate the contractor officials responsible for taking these corrective actions. Lastly, the contractor should state how and when it reviews program results and effectiveness with management at all levels of the company.

1F05 REVIEW OF EXECUTIVE ORDER ITEMIZED LISTING DATA FOR ACCEPTABILITY

Contractors must submit data and information on the results of their immediately preceding AAP, as well as submit data and information on their current year AAP if they are six months or more into the current year by the time they receive their Scheduling Letter.[39]

COs request the AAP data and information using the Itemized Listing that accompanies the Scheduling Letter. Several items on the Itemized Listing specify that if the contractor is six months or more into its current AAP year when the listing is received the contractor will provide OFCCP with updated data for the current AAP year. For each of these items, the contractor should provide OFCCP with as much current AAP year data as it has. This means, for example, that if the contractor is six months into its current AAP year, it should provide six months of additional data; if the contractor is seven months into its current AAP, it should provide seven months of data; and if the contractor is 10 months into its current AAP, it should provide 10 months of data.

The Itemized Listing requests data and information indicating the numerical and other results of contractors' affirmative action goals for each job group for the current and preceding AAP years, as well as employment activity data (*i.e.*, applicants, hires, promotions and terminations) and employee-

[39] 41 CFR 60-1.12(b).

level compensation data. It also requests copies of the contractor's EEO-1 reports for the last three years and a copy of the contractor's collective bargaining agreement, if applicable, including documents that implement, explain or otherwise elaborate on the provisions of the collective bargaining agreement.

a. *Data on Affirmative Action Goals*. As noted above, the contractor must provide information indicating the numerical results of affirmative action goals set for each job group in their immediately preceding AAP and, where applicable, results on goals set for their current AAP. For each goal not attained, or not currently being attained, contractors must describe the good faith efforts they have undertaken to achieve the goal. Provided they make good faith efforts, contractors will not be held in violation for failure to achieve the goal. Contractors should always submit goal data for the immediately preceding AAP unless they were not federal contractors covered by 41 CFR Part 60-2 during the preceding AAP year.

- *Information on Job Groups with Goals*. COs, in order to measure the results of goals, must first know whether a contractor established goals for its job groups and what the goals are. The contractor's current AAP submitted for desk audit will have this information for the current year. The contractor's report on whether it attained the goals set in the immediately preceding AAP should specifically state the goals for that prior year; however, when it does not, the CO must request a copy of the goals section of the contractor's immediately preceding AAP.

- *Information on Placements into Job Groups with Goals*. Since contractors establish annual goals in terms of a percentage placement rate, evaluation of progress toward the goals requires knowledge of the total number of placements into the job groups (hires, promotions and transfers) and the number of minority and female placements, as appropriate. If a contractor's progress report does not include this information or if it includes incomplete information (*e.g.,* the number of minorities and females but not total placements), the CO will determine if the missing information can be obtained from the contractor's submission of personnel activity data. If the information cannot be obtained from the personnel activity data, the CO must ask the contractor to forward a copy of the report on the progress made toward its goals as prepared under its internal audit and reporting system.[40] If the contractor employs 100 or more people, a copy of the underlying data it used for its adverse impact determinations on hires, promotions and any other placements into job titles within the job group should be requested.[41]

- *Good Faith Efforts*. When a contractor's goals report does not describe its good faith efforts to achieve the goals that it failed to meet, or does not describe those efforts in sufficient detail for a CO to evaluate their adequacy, the CO must request additional information to review during the desk audit.[42] The CO must also include this request for more information in the On-Site Plan for evaluation of good faith efforts. Even if the contractor corrects the

[40] FCCM 1F04(d) – Additional Required Elements of AAPs: Internal Audit and Reporting System.
[41] FCCM 1F05 – Review of Executive Order Itemized Listing Data for Acceptability.
[42] Record findings on Part B.IV of the SCER.

goals report, the closure letter may identify the incorrect or incomplete report as a technical violation that was corrected during the review.[43]

b. Review of Employment Activity Data for Acceptability

- *Data Format*. To be acceptable for the desk audit, the contractor must present Itemized Listing data either by job group or by job title. For example, data by total workforce is not acceptable; nor is data by EEO-1 job category, unless a category legitimately constitutes a job group at the particular establishment or the contractor has fewer than 150 employees.

- *Information Included*. For each job group or job title, Itemized Listing data in each major personnel activity area (*e.g.,* applicant flow, hires, promotions and terminations) must at least include the total number of actions, the total number of actions for women and the total number of actions for minorities. For example, applicant flow for a job group or job title must include at least the total applicants, total female applicants and total minority applicants; hires for a job group or job title must include at least the total hires, total female hires and total minority hires.

- *Evaluation Period Covered*. It is generally better to have the longest possible period because the data are more likely to reflect the contractor's usual way of operating. At a minimum, however, the Itemized Listing data must cover the immediately preceding AAP year and, if the contractor is six months or more into its current AAP year when it receives the Scheduling Letter, the current AAP year. If there are indicators of a violation, the evaluation period will extend to cover the two years before the contractor's receipt of the Scheduling Letter, as long as the contractor was covered by 41 CFR Part 60-2 during that period. To fully investigate and understand the scope of potential violations, the CO may need to examine information relating to periods after the date of the Scheduling Letter to determine, for example, if violations are continuing or have been remedied. If the CO believes it is necessary to request information for periods after the date of the Scheduling Letter, the CO must discuss the issue with his or her supervisor.

- *Source of Applicant Data*. COs must determine if a contractor used the internet to recruit for any job group(s). When the AAP does not readily specify the applicant pool for job groups in which individuals applied through the internet, the CO must contact the contractor to request the criteria used by the contractor in defining applicants for the job position(s) in question. The contractor's submission should address the following four questions:

    - Did the individual express an interest in employment through the internet or related electronic data technologies?

    - Did the contractor consider the individual for employment in a particular position?

    - Did the individual's expression of interest indicate that the individual possesses the basic qualifications for the position?

[43] Letter L-5 – Notice of Closing: Compliance Evaluation (Violations Found and Resolved).

- Did the individual at any point in the contractor's selection process, before receiving an offer of employment from the contractor, remove him or herself from further consideration or otherwise indicate that he or she was no longer interested in the position?

To be acceptable, the contractor must identify the electronic data technologies used to collect expressions of interest, the specific job positions for which the contractor considered applications through the internet and the basic qualifications for these positions. COs will note unacceptable submissions in Part B.II of the SCER, and investigate during the on-site review.

c. *Review of Employee-Level Compensation Data*. The Itemized Listing requests data regarding the contractor's compensation, including employee-level compensation information and policies related to compensation practices.

- *Data Format.* The contractor should electronically submit all of the compensation data requested, if the data is computerized. The data must also be contained within a single file.

- *Information Included*. The CO must review the data to ensure it includes compensation, gender, and race/ethnicity information, and hire date for each employee, as well as job title, EEO-1 category and job group. Compensation includes base salary and/or wage rate, and hours worked in a typical workweek. Other compensation or adjustments to salary such as bonuses, incentives, commissions, merit increases, locality pay or overtime should be identified separately for each employee. Data should be present for all employees, including full-time, part-time, contract, per diem or day labor, and temporary employees, as of the date of the workforce analysis in the contractor's AAP.

  Additional data that may be included are data on factors used to determine employee compensation such as education, experience, duty location, performance ratings, department or function, and salary level/band/range/grade. Documentation and policies related to compensation practices of the contractor should also be included in the submission, particularly those that explain the factors and reasoning used to determine compensation.

- *Time Period of Data.* The CO must verify that the "snapshot date" for employee-level compensation data is the same as the date for the organizational display or workforce analysis submitted by the contractor.

d. *Action When Data Are Unacceptable*. If employment activity or compensation data are submitted but not acceptable, COs must call the contractor and request that the appropriate changes are promptly made and the data resubmitted within the timeframe specified by the OFCCP field office. If, at the end of the allotted timeframe, the data are not received in an acceptable form, COs will recommend issuing an SCN specifying the regulatory sections the contractor violated.

Examples of unacceptable data submissions include, but are not limited to, instances where the data are in aggregations larger than job group or are not provided by sex, or by racial or ethnic category.

1G REVIEW OF A SECTION 503 AAP AND ITEMIZED LISTING DATA FOR ACCEPTABILITY

As with the Executive Order AAP, the determination of the *acceptability* of items listed in Part B.I of the SCER for the Section 503 AAP is limited to an evaluation conducted at the desk audit. This is different from an evaluation of the contractor's *implementation* of these items, which usually is reviewed on-site if it is determined during the desk audit that an on-site is needed. Additionally, the Section 503 regulations require the contractor to take a number of actions, even though the contractor does not address them in the AAP. Part C.I of the SCER covers the additional requirements that are reviewed on-site.

1G00 ITEMS INCLUDED

To be acceptable, a contractor's Section 503 AAP must include the items listed in 41 CFR 60-741.44 and 41 CFR 60-741.45.[44] It is the responsibility of COs to determine whether the contractor included all of the required items in the contractor's Section 503 AAP. Those items are listed in section 1E02 of the FCCM, and the acceptability assessment of each item is described below.

1G01 POLICY STATEMENT

Contractors are required to take affirmative action to employ and advance in employment qualified individuals with disabilities. The contractor must affirm its commitment to this affirmative action requirement by incorporating it in a policy statement included in its AAP.[45] The contractor must also post this policy statement on company bulletin boards. Applicants and employees with disabilities must be provided the policy statement in a format that is accessible and understandable such as Braille or large print versions of the notice.

At a minimum, to be acceptable, the policy statement must include:

- A statement indicating the top United States executive's support for the EEO policy;
- A statement identifying the EEO official responsible for the implementation of the AAP;
- A statement that the contractor hires, recruits, trains and promotes without regard to disability;
- A statement providing for an audit and reporting system;

---

[44] The final two sections of Subpart C of the Section 503 regulations, 41 CFR 60-741.46 and 60-741.47, do not address elements that need to be included in every AAP. Section 60-741.46 states that contractors have the option of voluntarily developing and implementing training or employment programs focused on the specific needs of people with certain disabilities and that, if a contractor implements such a program, it must include it in its AAP. Section 60-741.47 explains that a contract with a sheltered workshop is not a form of affirmative action that replaces the employment and advancement of qualified individuals with disabilities in the contractor's own workforce. The regulation provides that the contractor may include a contract with a sheltered workshop in its AAP if the sheltered workshop trains employees who must be hired by the contractor at full compensation once they become "qualified individuals with disabilities."

[45] See 41 CFR 741.44(a).

- A statement that the contractor will ensure that all employment decisions are based only on valid job requirements; and

- A statement that employees and applicants will not be subjected to harassment, intimidation, threats, coercion or discrimination because they engaged or may engage in filing a complaint, or assisted in a review, investigation or hearing related to any federal, state or local law requiring EEO for individuals with disabilities; or because they opposed any act deemed unlawful by any of the above-referenced laws; or because they exercised any other right under Section 503.

1G02 CONTRACTOR REVIEW OF PERSONNEL PROCESSES

An AAP, to be acceptable, must affirm that the contractor reviews its personnel processes periodically. These processes must provide for the 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. A contractor's AAP must describe the review, include the date the review was performed, and describe actions taken or changes made as a result of the review.[46]

a. *Adequacy of Present Procedures.* Contractors may assert that their present personnel procedures are adequate and indicate that modifications to the procedures are unnecessary. COs must determine whether the information received during the desk audit supports that assertion to determine acceptability. COs must request additional information during the desk audit or on-site review if they are unable to make an acceptability determination.

b. *Adverse Stereotyping.* Part of the contractor's review must be to ensure that its personnel processes are not stereotyping individuals with disabilities in a manner that limits their access to jobs for which they are qualified.

c. *Access to Personnel Processes*. The contractor must also ensure that applicants and employees with disabilities have equal access to personnel processes, including those implemented through information and communication technologies. Ensuring equal access to personnel processes includes providing any necessary reasonable accommodation to ensure that qualified applicants and employees with disabilities are able to apply, and are fully considered, for vacancies, promotions, and training opportunities. Appendix A to 41 CFR Part 60-741 provides guidelines for contractors on their duty to provide reasonable accommodations. With respect to the application process, an example of appropriate accommodation could be the provision of information on vacancies in a form accessible to those with vision or hearing impairments who have requested an accommodation. Though Section 503 and its implementing regulations do not require contractors to make their information and communication technology publicly "accessible," contractors are encouraged to do so.

1G03 CONTRACTOR REVIEW OF PHYSICAL AND MENTAL QUALIFICATIONS

An AAP must contain the contractor's schedule for the periodic review of all physical and mental job qualification standards to ensure that, to the extent they tend to screen out qualified individuals

[46] This information is requested in the Itemized Listing, under 41 CFR 741.44(b).

with disabilities, they are job-related and consistent with business necessity. To be acceptable, the AAP must affirm that the contractor completed a review of the physical and mental job qualification standards. Also, the contractor's desk audit submission must contain the most recent assessment including the date the assessment was performed, and any actions taken or changes made as a result of the assessment.[47] If the CO is evaluating a newly covered contractor, the AAP must provide a specific and reasonable time by which the contractor will review the physical and mental job qualifications.

The contractor must ensure that any inquiries or medical examinations regarding an applicant's or employee's medical condition made by, or at the behest of, the contractor are conducted following relevant laws, including the regulation at 41 CFR 60-741.23. All medical information the contractor obtains as a result of such inquiries or exams must be treated as confidential and maintained on separate forms and medical files, except as otherwise provided for in 41 CFR 60-741.23(d). The CO may consult the EEOC's *Enforcement Guide: Preemployment Disability-Related Questions and Medical Examinations* (https://www.eeoc.gov/policy/docs/preemp.html) for more information on pre-employment medical examinations and inquiries.

1G04 REASONABLE ACCOMMODATION TO PHYSICAL AND MENTAL LIMITATIONS

As a matter of nondiscrimination, contractors must make reasonable accommodation to physical and mental limitations when requested by qualified individuals with disabilities unless contractors can demonstrate that such accommodation would impose an undue hardship. In assessing undue hardship, contractors may consider factors such as financial costs and interference with the ability of other employees to do their jobs. As a matter of affirmative action, if an employee with a known disability is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the disability, then the contractor must confidentially notify the employee of the performance problem and inquire whether it is related to the employee's disability. If the answer is yes, the contractor must also confidentially inquire whether the employee needs a reasonable accommodation.

At the desk audit stage, the CO must review copies of reasonable accommodation policies, and documentation of any accommodation requests received and their resolution, if any.[48] Here are three examples of areas in which reasonable accommodations may be necessary: (1) accommodations in the application process; (2) accommodations that enable employees with disabilities to perform the essential functions of the position held or desired; and (3) accommodations that enable employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.

Once an individual with a disability has requested a reasonable accommodation, the employer must determine the appropriate accommodation. Sometimes the appropriate accommodation will be obvious or included in the accommodation request, *e.g.,* a request for a sign language interpreter. When it is not, the contractor should use a problem-solving approach to determine the appropriate accommodation. This approach may include initiating an interactive process with the

[47] This information is requested in the Itemized Listing, under 41 CFR 741.44(c).

[48] This information is requested in the Itemized Listing. Note that contractors are encouraged but not required to have written procedures for processing requests for reasonable accommodations. See 41 CFR 60-741.44(d)(2).

accommodation requester that may entail: 1) analyzing the particular job involved and determining its purpose and essential functions; (2) consulting with the individual with a disability to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation; (3) identifying potential accommodations and assessing the effectiveness each would have in enabling the individual to perform the essential functions of the position; and (4) considering the preference of the individual to be accommodated, and selecting and implementing the accommodation that is most appropriate for both the employee and the employer.

Appendix A to the Section 503 regulations at 41 CFR Part 60-741, *Guidelines on a Contractor's Duty to Provide Reasonable Accommodation*, provides additional information about the scope of the "undue hardship" defense and examples of reasonable accommodations, among other things. Though not required, OFCCP encourages contractors to develop and use written procedures to process requests for reasonable accommodations. Guidance on how to develop written procedures is in Appendix B to the Section 503 regulations at Part 60-741, *Developing Reasonable Accommodation Procedures*.

1G05 HARASSMENT

Contractors must develop and implement procedures to ensure that their employees are not harassed because of their disability status. A contractor should include a copy of these procedures in the AAP. This statement may be part of a broader anti-harassment policy that also prohibits harassment on other bases such as race and sex.

1G06 EXTERNAL DISSEMINATION OF EEO POLICY

Under 41 CFR 60-741.44(f), the contractor must send written notification of the company policy related to its affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers, requesting appropriate action on their part. COs should look for a description of the company's process for sending these notifications in the AAP and verify that the contractor sent the notifications if an on-site review is conducted.

1G07 OUTREACH AND POSITIVE RECRUITMENT

An acceptable AAP must affirm that the contractor engages in outreach and recruitment efforts reasonably designed to effectively recruit qualified individuals with disabilities. The contractor may engage in activities such as job fairs, recruitment activities with educational institutions and organizations that focus on job training and development for persons with disabilities, and posting of job opportunities with specialized organizations.[49] Contractors may also develop their own outreach programs. The scope of the contractor's efforts will depend upon circumstances, including the contractor's size and resources, and the extent to which existing employment practices are adequate.

The AAP must include documentation of the contractor's assessment of its outreach and recruitment efforts that it made over the previous 12 months. This assessment is two-fold in that the contractor must evaluate the effectiveness of each effort and it must conclude whether the totality of its efforts

[49] See 41 CFR 60-741.44(f)(2) for more examples of outreach and recruitment activities in which a contractor may engage.

has been effective in identifying and recruiting individuals with disabilities. When evaluating the effectiveness of each effort, the contractor must document its determination and, at a minimum, it must include the criteria used to make the determination. One of the criteria that must be included is the data collected under 41 CFR 60-741.44(k) discussed below in subsection 1G11. If, when looking at the totality of its efforts, the contractor concludes that outreach and recruitment efforts were not effective, it must identify alternative efforts that it will implement to fulfill its affirmative action obligations. COs must also ensure that the conclusion is reasonable for the AAP to be acceptable. COs must record results in Part B.V of the SCER.

1G08 INTERNAL DISSEMINATION OF EEO POLICY

An acceptable AAP must address the contractor's procedures to disseminate its EEO policy internally. The policy must be included in the contractor's policy manual or otherwise made available to employees. Also, if the contractor is a party to a collective bargaining agreement, it must provide notice to union officials and/or employee representatives of the EEO policy and request their cooperation. The procedures must be designed to foster understanding, acceptance and support among the contractor's employees, and to encourage employees to take actions to aid the contractor in meeting this obligation. The regulations at 41 CFR 60-741.44(g)(3) provide examples of the types of activities contractors may undertake to enhance their efforts to employ and to advance in employment individuals with disabilities. For example, contractors may schedule periodic employee meetings to discuss the policy or conduct meetings with executive, managerial and supervisory personnel to explain the intent of the policy, and to delineate individual responsibility for its implementation.

1G09 AUDIT AND REPORTING SYSTEM

An acceptable AAP contains a narrative description of the contractor's internal audit and reporting system. The system must be designed to perform and document the following actions:

- Measure the overall effectiveness of the AAP;
- Indicate any need for remedial action;
- Determine the degree to which the contractor's objectives have been attained;
- Determine whether known individuals with disabilities have had the opportunity to participate in all company-sponsored educational, training, recreational, and social activities; and
- Measure the contractor's compliance with the AAP's specific obligations.

Documentation of these actions must be retained as employment records and submitted in response to the Scheduling Letter. An acceptable AAP will also specify the frequency of reports and audits, and describe the actions taken to address deficiencies identified by the audit and reporting system.

1G10 OFFICIAL RESPONSIBLE FOR AAP IMPLEMENTATION

An acceptable AAP must identify the official assigned responsibility for implementing the contractor's affirmative action activities for individuals with disabilities, and describe that official's

responsibilities. The contractor must give this official the necessary senior management support and staff to manage the implementation of the program. The AAP should also describe the responsibilities of line management in carrying out the program.

1G11 TRAINING TO ENSURE AAP IMPLEMENTATION

Contractors are required to train their personnel involved in recruitment, screening, selection, promotion, disciplinary and related processes about the company's EEO obligations and, if appropriate, about the contractor's affirmative action commitments under Section 503. This section of the AAP should document that these personnel have been trained to ensure that the commitments in the AAP are implemented.

1G12 DATA COLLECTION ANALYSIS

Contractors are required to document the below information on an annual basis as part of their AAP, maintaining the data for three years, under 41 CFR 60-741.44(k).

- The total number of job openings and total number of jobs filled. Job openings include those that may be externally and internally filled;
- The total number of applicants for all jobs;
- The number of applicants who self-identified as individuals with disabilities or who are otherwise known to be individuals with disabilities;
- The total number of applicants hired; and
- The total number of applicants with disabilities hired.

When reviewing the AAP for acceptability, the CO must verify that the contractor provided documentation of computations or comparisons of the above information, as requested in the Itemized Listing. These computations or comparisons are criteria used to evaluate the effectiveness of the contractor's outreach and positive recruitment efforts. The data may also be used to analyze applicant trends to inform the contractor's review of personnel practices and self-audit.

1G13 UTILIZATION GOAL ANALYSIS FOR INDIVIDUALS WITH DISABILITIES

The Section 503 AAP regulation at 41 CFR 60-741.45 requires that contractors annually analyze their utilization of individuals with disabilities against the 7% aspirational goal established by OFCCP. This goal serves as an equal opportunity objective that should be attainable by taking the affirmative actions required in the Section 503 regulations. For an AAP to be considered acceptable, it must include the annual utilization goal analysis.

In the utilization analysis, contractors with more than 100 employees must evaluate the representation of individuals with disabilities within each job group of their workforce. For this analysis, contractors must use the same job groups that they use to evaluate utilization under Executive Order 11246. Like the Executive Order job group analysis, contractors with a total workforce of fewer than 150 employees may use the EEO-1 categories as job groups. A contractor

with 100 or fewer employees has the option to measure the representation of individuals with disabilities in its entire workforce.

If the percentage of individuals with disabilities in one or more job groups, or a contractor's entire workforce for smaller companies, is less than the 7% utilization goal, the contractor must determine whether and where barriers to EEO exist. To identify any such problems, contractors must assess personnel processes, the effectiveness of its outreach and recruitment efforts, the results of its AAP self-audit, and any other areas that might influence the success of the AAP. When a contractor finds problem(s), it must develop and implement action-oriented programs to correct them such as modifying personnel processes or taking a different approach for outreach and recruitment. For example, if the contractor finds the totality of its outreach and recruitment efforts was not effective in identifying and recruiting qualified individuals with disabilities for employment, the contractor should take action to identify recruitment sources that are not working and search for sources that yield better results, or introduce new outreach measures to increase the number of qualified applicants with disabilities. Several examples of outreach and recruitment activities are listed at 41 CFR 741.44(f)(2).

When reviewing the AAP for acceptability, the CO must closely examine the contractor's AAP to ensure it describes the utilization goal analysis, identifies any barriers to equal opportunity employment, and includes a description of action-oriented programs that the contractor has designed to address any barriers identified. If a contractor is six months or more into its current AAP year when it receives the Scheduling Letter and Itemized Listing, it must also submit the information that shows its current year progress toward meeting the utilization goal. Record results in Part B.V of the SCER.

1H REVIEW OF A VEVRAA AAP AND ITEMIZED LISTING DATA FOR ACCEPTABILITY

As with Executive Order and Section 503 AAPs, the determination of the *acceptability* of items listed in Part B.I of the SCER for the VEVRAA AAP is limited to an evaluation conducted at the desk audit. This is different from an evaluation of the contractor's *implementation* of these items, which usually is reviewed on-site if it is determined during the desk audit that an on-site is needed. Additionally, the VEVRAA regulations require the contractor to take a number of actions even though the contractor does not address them in the AAP. Part C.I of the SCER covers the additional requirements, which are reviewed on-site.

1H00 ITEMS INCLUDED

To be acceptable, a contractor's VEVRAA AAP must include the below items listed in 41 CFR 60-300.44 and 41 CFR 60-300.45. It is the responsibility of COs to determine whether the contractor included all of the required items in the contractor's VEVRAA AAP. Those items are listed in Section 1E02 of the FCCM, and the acceptability assessment of each item is described below.

1H01 POLICY STATEMENT

Contractors are required to take affirmative action to employ and advance in employment qualified protected veterans. The contractor must affirm its commitment to this affirmative action

requirement by incorporating it in a policy statement included in its AAP.[50] The contractor must also post this policy statement on company bulletin boards. Applicants and employees who are disabled veterans must be provided the policy statement in a format that is accessible and understandable such as Braille or large print versions of the notice.

At a minimum, to be acceptable, the policy statement must include:

- A statement indicating the top United States executive's support for the EEO policy;
- A statement identifying the EEO official responsible for the implementation of the AAP;
- A statement that the contractor hires, recruits, trains and promotes without discrimination on the basis of status as a protected veteran;
- A statement providing for an audit and reporting system;
- A statement that the contractor will ensure that all employment decisions are based only on valid job requirements; and
- A statement that employees and applicants will not be subjected to harassment, intimidation, threats, coercion or discrimination because they engaged or may engage in filing a complaint, or assisted in a review, investigation or hearing related to any federal, state or local law requiring EEO for protected veterans; or because they opposed any act deemed unlawful by any of the above referenced laws; or because they exercised any other right under VEVRAA.

1H02 CONTRACTOR REVIEW OF PERSONNEL PROCESSES

An AAP, to be acceptable, must affirm that the contractor reviews its personnel processes periodically. These processes must provide for the careful, thorough and systematic consideration of the job qualifications of applicants and employees who are known protected veterans for job vacancies either filled by hiring or promotion, and for all training opportunities offered or available. A contractor's AAP must describe the review, include the date the review was performed, and describe actions taken or changes made as a result of the review.[51]

a. *Use of Appendix C.* Though not required, contractors may utilize the procedures described in Appendix C to 41 CFR Part 60-300 to fulfill this requirement. These procedures describe how contractors annotate applications or personnel forms of protected veterans when considering them for employment opportunities.

b. *Adequacy of Present Procedures.* Contractors may assert that their present personnel procedures are adequate and indicate that modifications to the procedures are unnecessary. COs must determine whether the information received during the desk audit supports that assertion to

[50] See 41 CFR 300.44(a).
[51] This information is requested in the Itemized Listing, under 41 CFR 60-300.44(b).

determine acceptability. COs must request additional information during the desk audit or on-site review if they are unable to make an acceptability determination.

c. *Relevancy of Military Records*. Contractors must rely only on the portion of a protected veteran's military record that is relevant to the requirements of the opportunity for which the veteran is being considered. The contractor should confirm compliance with this requirement in the AAP.

d. *Adverse Stereotyping*. Part of the contractor's review must be to ensure that its personnel processes are not stereotyping protected veterans in a manner that limits their access to jobs for which they are qualified.

1H03 CONTRACTOR REVIEW OF PHYSICAL AND MENTAL QUALIFICATIONS

An AAP must contain the contractor's schedule for the review of all physical and mental job qualification standards to ensure that, to the extent they tend to screen out qualified disabled veterans, they are job-related and consistent with business necessity. To be acceptable, the AAP must affirm that the contractor completed a review of the physical and mental job qualification standards. The contractor's desk audit submission must also contain the most recent assessment, including the date the assessment was performed, and any actions taken or changes made as a result of the assessment.[52] If the CO is evaluating a newly covered contractor, the AAP must provide a specific and reasonable time by which the contractor will review the physical and mental job qualifications.

The contractor must ensure that any inquiries or medical examinations regarding an applicant's or employee's medical condition made by, or at the behest of, the contractor are conducted following relevant laws, including 41 CFR 60-300.23. All medical information the contractor obtains as a result of such inquiries or exams must be treated as confidential and maintained on separate forms and medical files, except as otherwise provided for in 41 CFR 60-300.23(d). The CO may also consult the EEOC's *Enforcement Guide: Preemployment Disability-Related Questions and Medical Examinations* (https://www.eeoc.gov/policy/docs/preemp.html) for more information on pre-employment medical examinations and inquiries.[53]

1H04 REASONABLE ACCOMMODATION TO PHYSICAL AND MENTAL LIMITATIONS

As a matter of nondiscrimination, contractors must make reasonable accommodation to the physical and mental limitations when requested by qualified disabled veterans unless they can demonstrate that such accommodation would impose an undue hardship. In assessing undue hardship, contractors may consider factors such as financial costs and interference with the ability of other employees to do their jobs. As a matter of affirmative action, if an employee who is a known disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the disability, then the contractor must confidentially notify the employee of the performance problem and inquire whether it is related to

[52] This information is requested in the Itemized Listing, under 41 CFR 300.44(c).
[53] See also 41 CFR 60-300.23(d).

the employee's disability. If the answer is yes, the contractor must also confidentially inquire whether the employee needs a reasonable accommodation.

Appendix A to the VEVRAA regulations at 41 CFR Part 60-300, *Guidelines on a Contractor's Duty to Provide Reasonable Accommodation,* provides additional information about the scope of the "undue hardship" defense and examples of reasonable accommodations, among other things. Though not required, COs should encourage contractors to develop and use written procedures to process requests for reasonable accommodations. For more on reasonable accommodation, please refer to Section 1G04 of the FCCM.

1H05 HARASSMENT

Contractors must develop and implement procedures to ensure that employees are not harassed because of their status as a protected veteran. A contractor should include a copy of these procedures in the AAP. This statement may be part of a broader anti-harassment policy that also prohibits harassment on other bases such as race and sex.

1H06 EXTERNAL DISSEMINATION OF EEO POLICY

Under 41 CFR 60-300.44(f), the contractor must send written notification of the company policy related to its affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers, requesting appropriate action on their part. COs should look for a description of the company's process for sending these notifications in the AAP and verify that the contractor sent the notifications if an on-site review is conducted.

1H07 OUTREACH AND POSITIVE RECRUITMENT

An acceptable AAP must affirm that the contractor engages in outreach and recruitment efforts reasonably designed to effectively recruit qualified protected veterans. The contractor may engage in activities such as job fairs, recruitment activities with educational institutions and organizations that focus on job training and development for veterans, and posting of job opportunities with specialized organizations.[54] Contractors may also develop their own outreach program. The scope of the contractor's efforts will depend upon circumstances including the contractor's size and resources, and the extent to which existing employment practices are adequate.

The AAP must include documentation of the contractor's assessment of its outreach and recruitment efforts that the contractor made over the previous 12 months. This assessment is two-fold in that the contractor must evaluate the effectiveness of each effort, and conclude whether the totality of its efforts has been effective in identifying and recruiting individuals with disabilities. When evaluating the effectiveness of each effort, the contractor must document its determination and, at a minimum, include the criteria used to make the determination. One of the criteria that must be included is the data collected under 41 CFR 60-300.44(k) discussed below in subsection 1H12. If, when looking at the totality of its efforts, the contractor concludes that outreach and recruitment efforts were not effective, it must identify alternative efforts that it will implement to

[54] See 41 CFR 60-300.44(f)(2) for more examples of outreach and recruitment activities in which a contractor may engage.

fulfill its affirmative action obligations. COs must also ensure that the conclusion is reasonable for the AAP to be acceptable. Record results in Part B.VI of the SCER.

1H08 INTERNAL DISSEMINATION OF EEO POLICY

An acceptable AAP must address the contractor's procedures to disseminate its EEO policy internally. The policy must be included in the contractor's policy manual or otherwise made available to employees. Also, if the contractor is a party to a collective bargaining agreement, the contractor must provide notice to union officials and/or employee representatives of the EEO policy and request their cooperation. The procedures must be designed to foster understanding, acceptance and support among the contractor's employees, and to encourage employees to take actions to aid the contractor in meeting this obligation. The regulations at 41 CFR 60-300.44(g)(3) provide examples of the types of activities contractors may undertake to enhance their efforts to employ protected veterans and to advance them in employment. For example, contractors may schedule periodic employee meetings to discuss the policy or conduct meetings with executive, managerial and supervisory personnel to explain the intent of the policy, and to delineate individual responsibility for its implementation.

1H09 AUDIT AND REPORTING SYSTEM

An acceptable AAP contains a narrative description of the contractor's internal audit and reporting system. The system must be designed to perform and document the following actions:

- Measure the overall effectiveness of the AAP;
- Indicate any need for remedial action;
- Determine the degree to which the contractor's objectives have been attained;
- Determine whether known protected veterans have had the opportunity to participate in all company-sponsored educational, training, recreational, and social activities; and
- Measure the contractor's compliance with the AAP's specific obligations.

Documentation of these actions must be retained as employment records and submitted in response to the Scheduling Letter. An acceptable AAP will also specify the frequency of reports and audits, and describe the actions taken to address deficiencies identified by the audit and reporting system.

1H10 OFFICIAL RESPONSIBLE FOR AAP IMPLEMENTATION

An acceptable AAP must identify the person assigned responsibility for implementing the contractor's affirmative action activities for protected veterans and describe his or her responsibilities. The contractor must give this official the necessary senior management support and staff to manage the implementation of the program. The AAP should also describe the responsibilities of line management in carrying out the program.

1H11 TRAINING TO ENSURE AAP IMPLEMENTATION

Contractors are required to train their personnel involved in recruitment, screening, selection, promotion, disciplinary and related processes about the company's EEO obligations and, if appropriate, about the contractor's affirmative action commitments under VEVRAA. This section of the AAP should contain documentation that these personnel have been trained to ensure that the commitments in the AAP are implemented.

1H12 DATA COLLECTION ANALYSIS

Contractors are required to document the below information on an annual basis as part of their AAP, and maintain the data for three years under 41 CFR 60-300.44(k).

- The total number of job openings and total number of jobs filled. Job openings include those that may be externally and internally filled;
- The total number of applicants for all jobs;
- The number of applicants who self-identified as protected veterans or who are otherwise known as protected veterans;
- The total number of applicants hired; and
- The total number of protected veteran applicants hired.

When reviewing the AAP for acceptability, the CO must verify that the contractor provided documentation of computations or comparisons of the above information, as requested in the Itemized Listing. These computations or comparisons are criteria used to evaluate the effectiveness of the contractor's outreach and positive recruitment efforts. The data may also be used to analyze applicant trends to inform the contractor's review of personnel practices and self-audit.

1H13 VEVRAA HIRING BENCHMARK

The VEVRAA regulations at 41 CFR 60-300.45 require contractors to establish a hiring benchmark every year to use for measuring their progress toward achieving EEO for protected veterans. The regulation also includes recordkeeping requirements related to documenting the hiring benchmark.

Contractors must use one of two methods to establish their benchmarks. Contractors may choose to establish a benchmark equal to the national percentage of veterans in the civilian labor force which is published and annually updated on OFCCP's website.[55] Alternatively, as described in 41 CFR 60-300.45(b)(2) and discussed below, contractors may establish their benchmarks by taking into account certain data from the Bureau of Labor Statistics (BLS) and Veterans' Employment and Training Service/Employment and Training Administration (VETS/ETA) that is also

[55] See "Annual VEVRAA Benchmark Effective Dates," at *http://www.dol.gov/ofccp/regs/compliance/AnnualVEVRAABenchmarkEffectiveDates.htm* (last accessed September 2019).

published on the OFCCP website, as well other factors that reflect the contractor's own data and unique hiring circumstances.[56]

When reviewing an AAP for acceptability, COs must first review documentation provided by the contractor to determine which method the contractor used to establish a hiring benchmark. If the contractor used the five factors described in 41 CFR 60-300.45(b)(2), then the CO must review the methodology used by the contractor to adopt its hiring benchmark. The benchmark represents the percentage of protected veterans that the contractor seeks to hire during the AAP year.[57] The CO must assess whether the contractor met its hiring benchmark using the hiring data submitted by the contractor.

To set a benchmark using the five-factor method, contractors must consider all of the five factors listed below.

- The average percentage of veterans in the civilian labor force for the state where the establishment is located for the previous three years. The DOL, BLS, calculates this information regarding the general availability of veterans for employment for each state. This data is provided in two different formats on OFCCP's website. One format displays annual data for every state, by year. While the other format shows three years of data for each individual state, by state. (Note: This data is not available for Puerto Rico, the U.S. Virgin Islands, American Samoa, the Northern Mariana Islands, Wake Island or Guam. Contractors in Puerto Rico or the U.S. Virgin Islands should select Florida data. Contractors in American Samoa, the Northern Mariana Islands, Wake Island and Guam should select Hawaii data.)

- The number of veterans who participated in the ESDS in the State where the establishment is located over the previous four quarters. The U.S. DOL's VETS tabulates this data regarding the number of veterans seeking jobs. This data is provided on OFCCP's website for the most recent four quarters, as well as for previous periods. (Note: This data is not available for American Samoa, the Northern Mariana Islands, Wake Island or Guam. Contractors in those locations should select Hawaii data.)

- The applicant ratio and hiring ratio for the establishment for the previous year. To make these computations, contractors use the data they have collected to comply with 41 CFR 60-300.44(k), which should also be included in the AAP. To calculate the applicant ratio, compare the number of protected veteran applicants to the total number of applicants. To calculate the hiring ratio, compare the number of protected veterans hired to the total number of hires.

- The most recent assessment of the effectiveness of the contractor's outreach and recruitment efforts. This information is included in the AAP.

---

[56] See "VEVRAA Benchmark Database," at *https://ofccp.dol-esa.gov/errd/VEVRAA.jsp* (last accessed September 2019).

[57] The VEVRAA regulations do not require the contractor to conduct a hiring benchmark analysis. However, a contractor may conduct such an analysis using data it has collected. Also, the VEVRAA hiring benchmark may be used by contractors as one of the criteria to measure the effectiveness of their outreach and recruitment efforts.

- Any other factor, such as the nature of the job openings or the facility's location, which would tend to affect the availability of qualified protected veterans. This factor provides contractors with the flexibility to consider any other pertinent factors about your establishment or the nature of your business that might affect the availability of qualified protected veterans as part of the process of establishing the hiring benchmark.

Contractors using this individualized method have the discretion to weigh the various factors in a manner that is reasonable in light of their unique circumstances. However, they must document each factor considered and explain the methodology and rationale used to arrive at the benchmark selected.

Contractors with multiple establishments that choose the five-factor option may establish individualized benchmarks for each of their establishments or may choose, instead, to adopt the national percentage of veterans in the civilian labor force as the benchmark for one or more of their establishments. Contractors with multiple establishments may utilize only one benchmark option per establishment.

1I SUMMARY OF ACCEPTABILITY PROBLEMS WITH AAPs AND ITEMIZED LISTING DATA

COs identify problems with the completeness and acceptability of a contractor's AAPs under Executive Order 11246, Section 503 and VEVRAA, and Itemized Listing data in Part B.II of the SCER. For each problem, COs must use Part B.II of the SCER to describe the specific problems and actions taken at the desk audit to resolve them, and actions planned for an on-site review. Any findings from on-site reviews are also recorded in this part of the SCER.

A CO may resolve some problems with the AAPs and Itemized Listing data at the desk audit after additional contact with the contractor. For example, if the CO cannot evaluate job group acceptability because there is no information on what job titles are in each group, that CO may be able to resolve the problem by obtaining the missing information from the contractor. The CO will note this follow-up contact and receipt of the additional information on the SCER. Such a notation could be written like this: "Called J. Smith May 1, 2011 and asked him to send a list of titles in each group. List received May 8, 2011."

If a CO determines that an Executive Order, Section 503, or VEVRAA AAP does not meet one or more of the standards for acceptability as discussed previously in this chapter, the CO must recommend suspension of the desk audit and issuance of an SCN, as appropriate.

1J ANALYSIS OF SECTION 503 AAP: REVIEW OF ONLINE APPLICATION PROCESS

The contractor is required to provide necessary reasonable accommodation to ensure applicants and employees with disabilities receive equal opportunity in the operation of personnel processes, including an equal opportunity to apply and be considered for employment. Therefore, in addition to reviewing a contractor's Section 503 AAP as part of the desk audit, COs must review the contractor's online application system (electronic or web-based) to ensure that it provides a means for contacting the contractor, other than through the online system, to request a reasonable

accommodation to apply for the job. Applicants may need this contact information if they cannot use the online application system because of a disability. At a minimum, this information must include the name and phone number or email address of the person (or office) to whom a request for an accommodation should be made. The contact information need not mention the words "reasonable accommodation," though it is a best practice to do so. COs will document the results of this analysis in the Case Summary and Recommendations section of the SCER. Contractors are also encouraged to make their information and communication technologies generally accessible. This is so even in the absence of a reasonable accommodation request. Doing so will minimize, but may not eliminate, the need to make individual reasonable accommodations.

1K ANALYSIS OF AN EXECUTIVE ORDER 11246 AAP: OVERVIEW OF ITEMIZED LISTING DATA, EEO TRENDS, WORKFORCE STRUCTURE AND PERSONNEL PRACTICES

The review of the personnel activity data such as hires, promotions and terminations provides a broad framework for the detailed review by job group of affirmative action progress or placement goals, and the assessment of any potential discrimination in employment activity. COs will review personnel activity data to gain an understanding of the specific kinds of employment activity that took place during the contractor's current and immediately preceding AAP years. COs must use Part B of the SCER to describe the specific problems and actions taken at the desk audit to resolve issues with the contractor's Itemized Listing data.

1K00 EEO-1 TREND ANALYSIS

COs must make an initial assessment of a contractor's workforce and utilization trends by reviewing the contractor's EEO-1 reports in Part B.III of the SCER.

a. *Long-Term and Short-Term Trends*. A CO must compare data from the contractor's most recent EEO-1 Report to data from its earlier EEO-1 reports. For example, if the contractor provides EEO-1 reports for 2015, 2016 and 2017, then the CO compares the 2017 data to the 2015 data to look at the long-term trends, and compares the 2017 and 2016 data for short-term trends. This information provides an overview of:

   - The distribution of jobs within the contractor's workforce (white-collar, blue-collar, predominant EEO job categories);
   - The direction of change in the total workforce and particular workforce categories (expanding, contracting, stable); and
   - The increases and decreases in minority and female representation in various areas.

b. *Changes Due to Reclassifications.* If a CO observes significant changes in the size of EEO-1 job categories with little or no corresponding personnel activity, the CO must investigate further to determine if the changes are due to the reclassification of jobs with concentrations of minorities or women from one EEO-1 job category to another. For example, suppose the total number of positions in the Craft category increases from one year to the next and indicates an increase in the number of women. Over the same period, however, both the total number of

Operative positions and the total number of women listed as Operatives decreases by nearly the same amount. The CO may then infer that the increase in Crafts may have resulted from the contractor changing the EEO-1 job category of the women's jobs, rather than from genuine hires or promotions.

c. *EEO Category Patterns*. EEO trend analysis allows COs to identify broad areas where minorities and women have been persistently underrepresented or concentrated, setting a framework for the detailed review of the workforce analysis for potential discrimination problems and the review of the contractor's goals progress by job group.

d. *Particular Minority Group*. This analysis permits the CO to identify any substantial disparity in the representation of a particular race or ethnic group when compared with the distribution of those same groups in the contractor's labor area and possible internal feeder categories. The disparity may exist in the contractor's workforce as a whole or certain categories. When a CO identifies such a disparity, the CO must plan to conduct an Impact Ratio Analysis (IRA) of the particular group, at least in those workforce areas where the disparity exists and for the type of activity most likely to have created the disparity.

   For example, if Hispanics are well represented in the labor area but have historically been absent from the contractor's workforce, the CO will plan to conduct hiring IRAs separately for Hispanics. If Blacks have historically been concentrated in the Laborers category, but poorly represented in Operatives and Crafts, the CO's review of the workforce analysis should focus on the types of jobs held by Blacks and any structural impediments to upward mobility from those jobs. In addition, the CO's IRA of blue-collar job groups, particularly for promotions and hires into jobs above Laborers, should be conducted separately for blacks. Section 1O of the FCCM further discusses separate employment activity data analyses for particular groups. The CO will also note if the investigation of such a disparity does not show discrimination. The CO will consider whether goals and/or specific affirmative action steps for the particular group are warranted.

1K01 WORKFORCE STRUCTURE AND PERSONNEL PRACTICES

In the initial review of the AAP and Itemized Listing data, COs evaluate the organizational display or workforce analysis for acceptability. As a result, they have a basic understanding of the contractor's organization and operations. For example, a workforce analysis should show:

- Whether the contractor organizes the facility by department or other unit (*e.g.,* division);
- Whether lines of progression exist; and
- How the contractor structures pay and other characteristics that may prove useful for subsequent analyses of both affirmative action and potential discrimination issues.

Other Itemized Listing data that the contractor may provide with the AAP, such as copies of labor agreements, should contain additional information such as pay rates, work performed, organizational structure and rules for internal mobility. COs must enter this information, to the extent that it is available during the desk audit, in Part B.VIII of the SCER.

1L ANALYSIS OF AN EXECUTIVE ORDER 11246 AAP: GOALS PROGRESS AND GOOD FAITH EFFORTS

The effectiveness of a contractor's overall AAP is not measured by whether the contractor met all its goals, but rather by whether the contractor made good faith efforts to do so. Generally, if the contractor met properly determined goals in a job group, further examination of good faith efforts for that job group is unnecessary. Determining whether a contractor demonstrated good faith efforts to meet its affirmative action obligations is separate from the determination of whether the contractor discriminated. Therefore, to focus the investigation on good faith efforts, COs must take the following steps:

- Measure the degree of progress in job groups where the contractor established goals and opportunities occurred;
- Evaluate the contractor's resulting overall goals performance; and
- Identify areas where specific additional information is needed to evaluate good faith efforts.

COs will evaluate both prior year and current year, if applicable, and address any goal issues in Part B.IV of the SCER.

1L00 ANALYSIS OF GOALS PROGRESS

As noted earlier, to be acceptable, AAP Itemized Listing data must include a report of progress on immediately preceding AAP year goals. In addition, the contractor should include a report of progress on current goals if the contractor is at least six months into its current AAP year when it receives the Scheduling Letter. COs will use this progress report to analyze goals progress.

a. *Data Needed*. To conduct this analysis, COs must first identify the job groups for which the contractor established goals at the beginning of the period under review. Second, COs must determine the percentage placement goal for each job group and the protected class to which it applies. Third, for each such job group, the number of total placements including hires and promotions, and the number of minority and/or female placements must be determined. If a contractor does not submit this information at the desk audit, COs will conduct the analysis below at whatever point in the review they obtain sufficient information.

b. *Analysis*. The analysis takes into consideration the number of opportunities the contractor provided in relation to the goal. More specifically, to determine how many minorities or women the contractor would have placed if the goal were met, COs multiply the percentage placement goal by the number of placements that occurred. The CO then compares this result with the number of minorities or women placed.

If a contractor established a goal for a particular race or ethnicity, or men or women of a particular race or ethnicity, then the CO evaluates progress on that goal in the same fashion as in the above example.

1L01 EVALUATION OF GOOD FAITH EFFORTS

An evaluation of good faith efforts includes a review of the contractor's overall performance toward goals, the identification of areas requiring additional examination, and ensuring that adequate information is available to determine good faith. Each is discussed in this subsection.

a. *Overall Performance*. In evaluating a contractor's good faith efforts, COs must first make an overall assessment of the contactor's goals and affirmative action performance, and record results in Part B.IV of the SCER. For example, were there areas where goals were established but not met? This evaluation should also take into account the fulfillment of AAP commitments and the quality of those commitments in terms of creative problem-solving to remove any impediments to minority and female utilization.

b. *Goal Areas Needing Further Examination for Good Faith Efforts*. COs must identify goal areas needing further evaluation for good faith efforts. For each such goal area, the COs will review any contractor description of good faith efforts pertinent to the area. This should be included as part of the contractor's report on goals. COs will also use the AAP and Itemized Listing data to identify the reasons for lack of progress and the type of AAP action items that would be pertinent. Below are some examples of the types of inquires a CO could pursue.

- Do the Itemized Listing data on employment activity show that the jobs were filled predominantly by hires or by promotions? If by hires, was there low applicant flow?
- What AAP commitments did the contractor make about recruitment efforts? Is there any evidence they were fulfilled?
- Was there an adequate representation of minorities and women in probable feeder groups if the contractor filled jobs primarily by promotion?
- What AAP commitments did the contractor make concerning the promotion process (*e.g.,* job posting, encouraging bidding, training)? Is there any evidence the contractor fulfilled these commitments?

1L02 PLAN FOR EVALUATION OF GOOD FAITH EFFORTS

For each goal area without sufficient information to determine good faith efforts, the CO will list the additional information needed on SCER Part B.IV. For example, the contractor did not meet its goal for minorities in the Clerical I job group. However, in reviewing the data, it appears that low applicant flow is the cause. The AAP may state that the contractor will use a particular agency with a significant minority clientele to aid in the recruitment of minority applicants for the Clerical 1 job group. The additional information needed here may include contact with the agency to confirm its use by the contractor, as well as other actions such as identifying additional recruitment sources while on-site.

1M BASIS FOR POTENTIAL DISCRIMINATION ANALYSES

It is OFCCP's policy, in conducting analyses of potential discrimination under the Executive Order, to follow the principles of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, which the EEOC enforces.

In general, when COs observe a disparity in the representation of a particular race or ethnic group, they conduct standard desk audit potential discrimination analyses for that group.[58]

a. *Guidelines on Discrimination Because of Religion or National Origin*. These Guidelines, at 41 CFR Part 60-50, are not a required AAP element under 41 CFR 60-2.10. Therefore, COs must evaluate the contractor's implementation of them on-site. Chapter 2, Section 2J provides detailed guidance on conducting this aspect of the on-site review.

b. *Sex Discrimination Regulations.* These regulations, at 41 CFR Part 60-20, are not a required AAP element under 41 CFR 60-2.10. The contractor's implementation of them, therefore, must be evaluated on-site. Chapter 2, Section 2K provides detailed guidance on conducting this aspect of the on-site review.

c. *Desk Audit Observation*. While the implementation of these regulations and guidelines can only be evaluated on-site, COs must pay particular attention to any problem area identified during the desk audit for women, or religious or national origin minorities. Additional information should be gathered on-site and directed to issues that are not addressed elsewhere in the regulations; for example, leave for religious purposes and maternity leave.

1N ANALYSIS OF AN EXECUTIVE ORDER 11246 AAP: AUDIT OF ORGANIZATIONAL PROFILE

The organizational profile depicts the contractor's staffing pattern to assist contractors in identifying organizational units where women or minorities are underrepresented or concentrated. Contractors have the option to use either an organizational display or a workforce analysis to satisfy the regulatory requirement for having an organizational profile in their Executive Order AAP. The organizational display is a detailed graphic or tabular chart, text, spreadsheet or similar presentation of the contractor's organizational structure, whereas the workforce analysis is a listing of each job title from lowest to highest-paid within each department or organizational unit, including supervisors. The organizational profile must identify the makeup of each unit by gender, race, and ethnicity. If a workforce analysis is used, the wage rate or salary range for all job titles must be given.[59]

COs must closely examine patterns of minority and female employment in each department or work unit to identify disparities for further investigation on-site. One example of a disparity that may warrant further investigation is departments or job titles where women or minorities are either significantly overrepresented or underrepresented based on their representation in the overall

---

[58] FCCM 1O01 – Specific Race/Ethnic Group Analysis.

[59] See 41 CFR 60-2.11 for more details about the differences between the requirements for an organizational display versus a workforce analysis.

workforce. COs must pay particular attention to departments and work units where minorities or women are absent or make up nearly the entire department or unit, and look for indicators of job steering or other discriminatory placement practices.

1N00 UNDERREPRESENTATIONS AND CONCENTRATIONS

When examining the organizational profile, COs look for evidence of concentration and underrepresentation, as such evidence could indicate that women, for instance, are steered into lower-paying positions.

a. Concentration. The term *concentration* refers to any job titles where there are significantly higher representations of a minority group or women than would be expected in consideration of their overall representation in the contractor's workforce or in a relevant unit of that workforce.

b. Underrepresentation. The term *underrepresentation* is the opposite of "concentration." It exists when a minority group or women are found in a particular department, job group or job title in numbers significantly lower than would be expected in light of their overall representation in the contractor's workforce or in a relevant unit of that workforce.

It is important to note that the identification of a concentration or underrepresentation does not mean that there is discrimination. It is only an indicator that further investigation is warranted. COs must document areas of underrepresentation and concentration on Part B.VIII of the SCER and investigate further.

1N01 DETERMINING THE RELEVANT WORKFORCE SECTOR AND JOB AREAS

COs must review a contractor's organizational profile to identify the concentration and underrepresentation of minorities and women. Under certain conditions, COs may reasonably expect that the contractor would evenly employ minorities or females throughout a particular job area. A "job area" is a sub-unit (*e.g.,* department, job group, line of progression) of the blue-collar or white-collar sectors of the contractor's workforce. The conditions for such a "reasonable expectation" are that:

- The jobs in the area have similar entry-level qualification requirements; and
- The jobs above entry-level are filled primarily by promotion.

Where these conditions exist, COs may use the Job Area Acceptance Range (JAAR) analysis to measure job area distribution patterns. The JAAR assesses the representation of minorities and women in a particular job area in comparison with the relevant base workforce sector. A workforce sector is the total workforce of a particular job area. For example, if a contractor has 1,000 employees at an establishment and its production division is composed of four departments with a total workforce of 400 employees, then the production division is the job area and 400 employees is the workforce sector. In order for COs to conduct this analysis appropriately, they must determine the relevant workforce sectors or job areas to analyze.

a. Relevance of Other Information. To determine the relevant workforce sector and job areas for the JAAR, COs are guided by the findings of the desk audit. For example, the information a CO

obtains from the earlier analysis of EEO-1 trends may show persistent minority or female representation above or below comparable availability; or a CO may identify a substantial disparity in the representation of a particular minority group. Information the CO derives from the review of the organization of the contractor's workforce and personnel practices (*e.g.*, internal mobility, pay structure) informs the CO's analysis of workforce sector and job areas.

The CO must also conduct analyses on the employment activity and compensation data provided by race, ethnicity, and gender, as is discussed in Sections 1O and 1P.

b. *Workforce Sector and Job Area*. When conducting a JAAR, COs must determine the appropriate sector of the contractor's workforce with which to compare minority group and female representation in the particular job(s) being examined (*e.g.,* blue-collar, white-collar, clerical, the entire workforce, job group). To do so, COs must remember that there is a reasonable expectation that, absent discrimination, minorities and women will be more or less evenly distributed among the job areas within the sector. This expectation is highest when;

- Entry-level jobs in the sector require similar qualifications; and
- The contractor primarily fills jobs above entry-level in the sector by promotion.

The expectation may be lower if entry-level jobs in the sector are more differentiated in skill requirements. In this case, it may become more likely that minority or female availability will differ, or the contractor fills jobs above entry-level predominantly by hires.

c. *Applying the JAAR to a Particular Contractor*. An appropriate definition of the workforce sector depends on the particular contractor's structure, and legitimate skill needs and personnel practices. In general, a JAAR that focuses on where minorities and women are located organizationally,[60] and a JAAR that focuses on the level at which minorities and women are employed,[61] tend to identify potential promotion problems. Such promotion problems may be related to placement. Examples of how to use the JAAR to identify problems in placement, concentration or underrepresentation of employees include the following.

- *Comparing Workforce Representation to Departmental Representation.* When there are departments or organizational units with largely similar qualifications for entry-level positions (*e.g.,* unskilled and, to a more limited extent, semi-skilled, in blue-collar; undifferentiated trainee jobs in white-collar), COs must compare the representation of women and minorities in each department with representation in the total workforce of all such departments.

- *Comparing Workforce Representation to Representation in Lines of Progression.* When there are lines of progression or usual promotional sequences that cut across department lines and have similar entry-level requirements, COs may compare the representation of minorities and women in each line of progression with representation in the total workforce of all lines of progression.

---

[60] Examples include which departments, units or lines of progression tend to identify potential placement problems.
[61] Examples include concentrations in lowest level jobs within a line of progression department.

- *Comparing Departmental Representation to Representation in Lines of Progression within the Department.* When there are separate lines of progression and/or usual promotional sequences within a department or similar organizational unit, COs may compare representation in each line of progression with the representation in the department as a whole.

- *Comparing Department to Jobs within the Department*. In the absence of lines of progression or usual promotional sequences, and where jobs within a department are usually filled by promotion from within or might reasonably be filled in such a manner based on the nature of the jobs and the training the contractor could reasonably be expected to offer, COs may compare representation in particular jobs within that department with representation in the department as a whole.

- *Comparing EEO-1 Job Category to Type of Job or Job Title*. It can be useful to compare representation in an EEO-1 job category or job group to the distribution within specific titles in that category or group, or both. For example, in an Office and Clerical category, women may be concentrated in General Clerical positions, but underrepresented in Production and Material Control clerical jobs.

- *Comparing Lines of Progression to Jobs in Lines of Progression*. The CO may also treat a line of progression or usual promotional sequence, particularly one with a large number of incumbents, as a comparative workforce sector. Minority or female, or both, representation in the line of progression can be compared with their representation in jobs at different levels in the line of progression.

- *Comparing Job Title to Job Title within Department(s)*. When a job title, particularly one with a large number of total incumbents, appears in several departments, COs can compare representation in the title as a whole with representation in the title in each department.

d. *Applicability to Both White-Collar and Blue-Collar Jobs.* COs can apply these analyses to white-collar and blue-collar situations. In all cases, COs must ensure that the sector of the contractor's workforce that they use as a basis for comparison with a particular job area is, in fact, relevant. Particularly in the white-collar area, differences concerning factors such as the need for specialized education or skills may make establishing a basis for comparison difficult.

e. *Determining Whether the Concentration or Underrepresentation is "Substantial."* Once COs select the job area and the relevant workforce sector, the next step is to perform the analysis and identify those job areas which have "substantially" more or fewer minorities and women than would reasonably be expected by their representation in the workforce sector selected. The COs will investigate these job areas in addition to any other indicators identified, statistical or otherwise, on-site.

1N02 ANALYSIS BASED ON A PARTICULAR RACE OR ETHNICITY

If a CO's review of the contractor's EEO-1 job category data shows substantial disparities in the representation of a particular race or ethnic group in the workforce as a whole, or in their distribution among job categories, the review of the workforce analysis should include a focus on that race or ethnic group especially in those job areas where a CO observed disparity.

For example, if category data show that whites and Hispanics were concentrated in the Laborers category, poorly represented in Operatives and absent in Crafts, the CO's review of the workforce analysis must:

- Specifically identify the types of blue-collar jobs in which whites and Hispanics are employed; and
- Determine whether these jobs fall into lines of progression, or departments or units, or both, that tend to inhibit progression to Operatives and Crafts, etc.

Even when a CO does not observe these disparities in the initial category screen, the CO must be alert for indications of potential problems in the distribution of the particular racial or ethnic groups while reviewing the organizational profile. This diligence is especially necessary if the labor area has high representation of more than one race or ethnic group, or the general employment patterns in the industry involved differ among specific race or ethnic groups. It is worth noting that both situations may exist simultaneously and could give rise to indicators of a potential problem.

1O ANALYSIS OF EXECUTIVE ORDER 11246 EMPLOYMENT ACTIVITY DATA

During the desk audit, a CO will analyze the employment activity data the contractor provides in response to the Scheduling Letter and Itemized Listing[62] to determine whether there are any statistical indicators that the contractor's selection practices are not neutral. In particular, the CO will examine hiring, promotion, termination, and placement practices to conduct various analyses permitted by UGESP,[63] including the IRA and standard deviation analysis.

1O00 CONDUCTING STATISTICAL ANALYSES OF EXECUTIVE ORDER 11246 EMPLOYMENT ACTIVITY DATA

COs must ensure that contractors submit employment activity data as specified in the Itemized Listing of the Scheduling Letter to conduct statistical analyses to identify any potential indicators of discrimination.

Generally, statistical analysis assists the CO in identifying the number of individuals selected from different groups (*e.g.,* men versus women) compared to the number expected to be selected for each group, based on each group's proportion in the relevant applicant or employee pool. In a hiring analysis, the relevant pool is usually based on applicants for each job group or job title. If, for example, the hires are significantly less than the expected hires for women based on an IRA, standard deviation analysis[64] or any other analysis permitted by the UGESP, the CO has an indicator that the contractor's selection practice may be having an adverse impact on women. At a minimum, further analyses would be warranted. This analysis could include requesting additional

---

[62] This data is described in subsection 1F05.

[63] 41 CFR Part 60-3.

[64] The standard deviation represents the distribution of the responses or data around the mean, and is often used to measure the amount of confidence in statistical conclusions. COs may run standard deviation analyses to determine whether and what types of additional information they may need to establish potential discrimination.

data at desk audit or on-site from the contractor about its selection practices and policies, refining data for further statistical analysis based on information obtained from the contractor, and consulting with statistical experts in the DPO.

1O01 SPECIFIC RACE AND ETHNIC GROUP ANALYSIS

In testing the contractor data on selection practices to determine whether they are race-neutral, COs must analyze the data by individual racial or ethnic categories. Usually, COs analyze the categories specified in the EEO-1 report or the racial and ethnic categories specified at 41 CFR 60-3.4. However, if the contractor provides more detailed data, the CO may conduct an analysis based on that case-specific grouping. As explained above, the CO must examine the availability of racial and ethnic groups in the geographic area or applicant pools and use statistical analysis to compare the selection rates of racial and ethnic groups to the rates that would be expected if the selection practices were neutral. COs must consider whether selection rates or identified shortfalls for each individual racial or ethnic group indicate discrimination, based on statistical or other analysis, or any other case-specific evidence.

If, during the desk audit or at a later point in the evaluation, the CO determines that multiple groups are affected by the same discriminatory policy or practice, or that multiple groups are favored by selection practices, the CO must consider whether to combine individual groups to determine the affected class or comparators. However, a CO must never combine racial and ethnic groups when the effect is to dilute the statistical indicator of discrimination for a particular racial or ethnic group. COs must also consult with their RSOL and DPO before determining whether to combine groups to ensure that doing so is consistent with applicable legal standards and best practices for statistical analysis.

1O02 PROPER USE OF PRELIMINARY STATISTICAL RESULTS

It is important to remember that statistical results that identify preliminary indicators of a potential discrimination problem do not themselves prove discrimination or the existence of an affected class. For example, a CO may compute an adverse IRA in a job group using an insufficiently refined candidate pool. Further statistical analysis and further investigation on-site can determine whether discrimination has occurred.

1O03 STATISTICAL ANALYSIS SUMMARY

When COs identify evidence of disparity against members of a protected group, they must request additional data from the contractor for further analysis. If the analysis confirms that the statistical disparities exist and further investigation is needed, COs must describe the problem on SCER Part B.VII and indicate that the matter needs further investigation on-site to determine whether there is discrimination.

a. Contractor Adverse Impact Determinations (Contractors with 100 or More Employees).

- *Maintenance of Records.* As noted earlier in the discussion of the recordkeeping requirements in 1C02, the UGESP requires contractors with more than 100 employees to maintain specific records by job title that are sufficient to disclose whether their selection

procedures have an adverse impact on the employment opportunities of each sex, and each race or ethnic group, or both.[65]

- *Analysis of Impact.* The UGESP also requires that contractors with more than 100 employees analyze this data annually to determine whether the total selection process for each job is having any adverse impact. These determinations are required by sex and for each race and ethnic group that constitutes 2% or more of the labor force in the relevant labor area, or 2% or more of the applicable workforce for jobs filled internally.

b. *Requesting Contractor Determinations*. When a CO identifies a job group with evidence of adverse impact and the contractor employs more than 100 people, the CO will ask the contractor to furnish the adverse impact determinations prepared during the review period as a part of its in-depth analyses for the job titles that fall within the job group. This assumes, of course, that the contractor has not already provided this information. For example, if the CO finds an adverse IRA for female hires into a Professionals job group, the contractor should submit its adverse impact determinations for the hiring of women in each title within the Professionals group. This action will assist the CO in determining whether the IRA and other statistical analyses need to be refined before investigating further. A CO may also request the contractor's adverse impact analyses in other areas. For example, a review of the workforce analysis showed a concentration or underrepresentation suggesting a potential placement problem. The contractor provided personnel activity data by job group and it does not show placements into the titles of concern. In response, a CO must request the contractor's adverse impact analyses for hires, promotions and transfers into the job titles at issue. When appropriate, the CO may also ask to review the contractor's adverse impact analyses and/or may ask the contractor to identify those jobs where its analyses showed an adverse impact.

c. *Need for Information about the Selection Process.* When the hiring, promotion or termination analysis for a job group or job title indicates that further investigation is needed, the CO must ask the contractor to provide a description of how the employment selections are made for positions in the job group or job title at issue. The description should include the steps in the process. The contractor should provide the following data for each selection step: the decision-makers, the criteria used, a description of how the criteria are used, and the records maintained. In addition, when a job group is under investigation, the CO should ask whether the selection process, as a whole or individual steps, applies to all of the job titles in the job group, and whether the process was the same throughout the entire duration of the review period. It is also helpful for the CO to know whether the process applies to other job groups or titles in addition to the group or title at issue. Steps may include, for example, review of application forms by the human resources representative, written tests, formal or informal interviews, physical examinations and on-the-job tests. The CO will plan to verify the contractor's statements through review of records, interviews with applicants and employees, and, if possible, observation of the process by which applicants are screened and selected.

d. *Multi-Component Selection Processes - Contractor Obligations.*

---

[65] The racial and ethnic groups are defined by 41 CFR 60-3.4B as Black, Hispanic, Asian, American Indian, and white other than Hispanic. However, OFCCP also permits contractors to keep their records concerning impact by using the racial and ethnic categories on the EEO-1 report.

- *Adverse Impact in Total Selection Process*. When the contractor submits its adverse impact analyses for desk audit and if the analyses shows an adverse impact in the total selection process for a job group or job title, the UGESP requires the contractor to evaluate the individual components of the total selection process for an adverse impact. Therefore, in a multi-step and/or multi-criterion selection process with an adverse impact, the CO must plan to request the contractor's records showing at what step(s) and/or by what criteria members of the nonfavored race, ethnic group or sex the contractor is disproportionately screening out, as well as any validity studies the contractor conducted of its selection procedures.

- *No Adverse Impact in Total Selection Process*. Generally, if the total selection process for a job does not have an adverse impact, a contractor will not usually be expected to evaluate the individual components for an adverse impact or to validate those individual components, and enforcement action will not usually be warranted based on a component.

There are, however, several exceptions: when enforcement appears warranted and with individual complaints of discrimination.

- *Exception 1: When Enforcement May Be Warranted.* In some circumstances, even though there is no adverse impact in the total selection process, further investigation and, possibly, enforcement action may nonetheless be appropriate when an individual component has an adverse impact (*e.g.,* height and weight requirements or criminal background checks), and its use is not justified as job-related and consistent with business necessity.

- *Exception 2: Individual Complaints of Discrimination.* The "bottom line" standard – that a contractor need not evaluate the individual components of a selection process if the process as a whole does not result in adverse impact – does not preclude the investigation of complaints alleging race, ethnicity or sex discrimination caused by a component of a selection process.[66]

1P COMPENSATION ANALYSIS

Under Executive Order 11246 and its implementing regulations, contractors may not discriminate in rates of pay or other forms of compensation, and must review, evaluate, and monitor their compensation systems to determine whether there are disparities based on sex, race, or ethnicity.[67] OFCCP enforces the ban on compensation discrimination using a flexible, fact-specific approach to proof. This approach involves factual investigation, and data and legal analyses which allow OFCCP to identify and remedy all forms of compensation discrimination. The CO should tailor the compensation investigation and analytical procedures to the facts of the case.

---

[66] See Questions and Answers Nos. 25 and 26 in Adoption of Questions and Answers to Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures, available at *https://www.eeoc.gov/policy/docs/qanda_clarify_procedures.html* (last accessed August 10, 2019).

[67] 41 CFR 60-1.4; 41 CFR 60-2.17(b)(3). Contractors are also prohibited from discriminating against employees and applicants in rates of pay or any other form of compensation based on disability or status as a protected veteran under Section 503 and VEVRAA, respectively, and their implementing regulations. See 41 CFR 60-741.20(c) and 41 CFR 60-300.20(c).

At the desk audit stage, the CO must analyze the contractor's compensation data.[68] The CO must also review whether the AAP indicates that the contractor conducted the required evaluation of compensation to identify disparities based on sex, race or ethnicity; developed action-oriented programs to address any identified pay disparities or barriers to pay equity; and reported results to management.[69]

In addition to identifying potential discrimination at the desk audit stage, the CO must review the AAP and other submitted documents to ensure that the contractor does not have a policy to discharge or otherwise discriminate against applicants or employees for inquiring about, discussing, or disclosing their own compensation or the compensation of other employees.

1P00 GENERAL PRINCIPLES OF COMPENSATION DATA ANALYSIS

Compensation is defined as 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.[70] As stated, the definition is not exhaustive and can include other forms of compensation, such as paid family leave. OFCCP can investigate and seek remedies for discrimination in any form of compensation. In every review of potential compensation discrimination, there are three key questions to be addressed:

- Is there a measurable difference in compensation on the basis of sex, race or ethnicity?
- Are the differently compensated groups of employees comparable under the contractor's wage or salary system?
- Is there a legitimate, nondiscriminatory explanation for the difference?
    - *Measurable difference.* When statistical analysis is used, a measurable difference generally means a statistically significant difference - two or more standard deviations - consistent with Title VII principles. When nonsystemic comparisons of small groups are conducted, there must be a measurable difference in compensation plus sufficient other evidence (often in the form of anecdotal evidence).
    - *Comparable employees.* OFCCP follows the Title VII standard of comparing similarly situated workers to establish a case of compensation discrimination. The definition of "similarly situated" is a case-specific legal standard. In the compensation discrimination context, "similarly situated" means that employees are similar in all the ways that are relevant in the contractor's compensation system. Relevant factors in determining similarity may include tasks performed, skills, effort, level of responsibility, working conditions, job difficulty, minimum qualifications, and other objective factors. Employees may be similarly situated where they are comparable on the factors relevant to the investigation, even if they are not comparable on others.

---

[68] OFCCP Directive 2018-05, "Analysis of Contractor Compensation Practices During a Compliance Evaluation."
[69] 41 CFR 60-2.17(b)(3); 41 CFR 60-2.17(d).
[70] 41 CFR 60-1.3.

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

During a compliance review, the CO must examine all employment practices that appear to lead to compensation disparities. For example, there may be differences in employee access to opportunities affecting compensation such as higher-paying positions, job classifications, work assignments, training, preferred or higher-paid shift work, and other opportunities. The CO should also examine policies and practices that unfairly limit a group's opportunity to earn higher pay, such as "glass ceiling" issues, and access to overtime hours, pay increases, incentive compensation, and higher commission or desired sales territories. The CO may investigate any observed differences in pay, other earnings or benefits, job assignment/placement, training/advancement opportunities, differences in opportunities to increase compensation, or other unexplained differences.

1P01 ITEMIZED LISTING DATA ON COMPENSATION

The Itemized Listing requires a contractor to submit employee-level (*i.e.*, individual) data on compensation. Upon receipt of a contractor's AAP and supporting compensation data, the CO must review the submitted compensation data to ensure that it satisfies all of the requirements from the Itemized Listing, as explained above.[71] If the CO determines that the submission does not satisfy the requirements of the Itemized Listing data request, the CO must contact the contractor to discuss the discrepancies. Additionally, the CO must send a written request to the contractor seeking production of the compensation data within seven business days of receipt of the letter. The CO must recommend the issuance of an SCN if the contractor fails to comply.[72]

1P02 DESCRIPTIVE ANALYSIS OF COMPENSATION

The CO may begin the desk audit analysis of compensation once the contractor's compensation data submission is complete and acceptable. What constitutes an acceptable submission is discussed in Section 1F05. Analysis should begin with an examination of the descriptive statistics related to the data. Descriptive statistics are fact-based statistics such as mean, median, modes, or other distributional measures. The CO may use preliminary tools, tests, or broad indicators of potential compensation issues at the desk audit to identify pay practices or issues needing further review. In most cases, it is insightful to use nonsystemic comparative analysis to compare the treatment of similarly situated individuals or small groups of employees. In familiarizing themselves with the data, the CO should ascertain whether groupings, ratings, rankings, labels, and other employer-assigned attributes are differentially distributed by gender, race, or national origin. As with the systemic analysis of compensation, the CO must ensure that similarly situated employees are being compared and must assess whether any explanatory factors the contractor offers are implemented fairly, consistently applied, and relevant to the contractor's compensation system. This data exploration stage also includes an assessment of the pay analysis groups for reasonableness and statistical sufficiency. Considering these questions in consultation with supervisors, RSOL and

[71] FCCM 1C01 and 1F05.
[72] See Chapter 8: Resolution of Noncompliance.

Branch of Expert Services (BES) will allow the CO to determine whether initial indicators warrant further systemic analysis and on-site investigation.

1P03 SYSTEMIC STATISTICAL ANALYSIS OF COMPENSATION AT DESK AUDIT

Regression analysis is the statistical method of analysis most often used by OFCCP to analyze systemic patterns in compensation. Regression analysis builds upon descriptive statistics and anecdotal evidence by further isolating the comparability of the workers at issue. OFCCP compares similarly situated employees by forming pay analysis groups and controlling for relevant factors influencing their pay.

a. *Similarly Situated Employee Group (SSEG).* A similarly situated employee group (SSEG), is a group of employees who are comparable for purposes of analyzing a contractor's pay practices. Note that OFCCP also uses the term "pay analysis group" and views the SSEG and pay analysis group, or PAG, as equivalent terms. An SSEG may be limited to a single job or title, and regression analysis may be performed separately on distinct units or categories of workers. Alternatively, an SSEG may aggregate employees from multiple job titles, units, categories and/or job groups to perform a regression analysis, with statistical controls added as necessary to ensure workers are similarly situated. For example, an SSEG could cover an entire unit or division of the organization but control for job title or pay grade to ensure that the analysis compares similarly situated workers. Statistical testing for practices that impact pay such as job assignment may require a different analytic grouping than testing for pay differences within a single job.

   At the desk audit stage, the CO forms preliminary SSEGs by considering the industry, the types of jobs and compensation at issue, the contractor's actual compensation practices and the available data. If a contractor provides its compensation hierarchy and job structure with its Itemized Listing submission, the CO must attempt to design its pay analysis based on that structure. In the absence of information about a contractor's compensation system, the CO should conduct its desk audit analysis using AAP job groups as SSEGs, provided they are reasonable,[73] meet the requirements of 41 CFR 60-2.12, and are of a sufficient size to conduct a meaningful systemic statistical analysis. If those conditions are not met, the CO should use EEO-1 job categories as SSEGs. Salary structures and levels or stacking lines of progression (*e.g.,* Accountant 1, Accountant 2, etc.) may also be viable options for SSEGs. Working with BES, the CO must control further for sub-job groupings, functions, units, or titles, as appropriate. During the desk audit analysis, OFCCP will also control for tenure and full-time status as well as other factors, as appropriate.

b. *Statistically Controlling for Factors.* In a statistical analysis of compensation, using controls is a way of ensuring comparison of similarly situated workers and accounting for potential explanations of pay differences. Controlling for education, for instance, accounts for the effect of education on any differences in pay. OFCCP can control for observable employee factors such as education, tenure or performance, as well as institutional factors such as department or job title. It is only appropriate to control for factors in a statistical model if they

[73] FCCM 1F01.

have been implemented fairly and consistently applied and are relevant to the contractor's compensation practices. At the desk audit stage, the CO should utilize a variety of desk audit tools and consult with the regional BES expert to decide on which factors to include in the preliminary analytical model.

For example, if a contractor awards bonuses based on performance, employees may be similarly situated if their performances are assessed according to the same process and criteria, and if they have similar performance ratings. Considering these facts, a statistical analysis of bonuses could compare similarly situated employees by grouping together all employees who are subject to the same performance evaluation process into one pay analysis group, and then statistically controlling for individual differences in performance ratings, as well as any other relevant factors. In some instances, the pay analysis group appropriate for an analysis of bonus pay may differ from the pay analysis group used to assess base pay.

1P04 CONCLUDING DESK AUDIT COMPENSATION ANALYSIS

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

- Compensation issues for women in the Engineers and Project Architects SSEGs.
- Compensation policies and practices for the Engineers SSEG for Blacks and Hispanics, and the Technicians SSEG for females.

When conducting further review of a contractor's compensation practices, the CO must seek additional information to understand the contractor's compensation system, the elements that drive compensation decisions, and the job structure/hierarchy. Based on these facts, the CO may broaden or narrow the SSEGs and subsequent data requests to conform the analysis closely to the contractor's compensation system and practices, where appropriate. Chapter 2 contains information on conducting a further review of potential compensation discrimination.[74]

1Q SCER SUMMARY OF POTENTIAL DISCRIMINATION AREAS AND ONSITE INVESTIGATIVE PLAN (ALL LAWS)

All potential discrimination problems that a CO identifies during the desk audit must be summarized, as appropriate, in Part A (Preparation), Part B.VII (Employment Activity Data Analyses), and Part B.VIII (Other Problems Identified for On-site Investigation) of the SCER. These summaries must include any problems the CO identifies while reviewing compliance history, the contractor's AAPs, and any problems the CO identifies during the review and analyses of Itemized Listing data.

[74] See Directive 2018-05 for compensation modeling guidance beyond the desk audit.

For each potential discrimination problem a CO identifies, an on-site investigative plan must be developed. If the CO finds indicators of what appears to be a single potential discrimination problem through more than one analysis, such as an area of minority concentration with statistical indicators of discrimination for minority promotions out of the area, the CO only needs to describe the problem once in the On-Site Plan. The On-Site Plan should be as specific as possible and will set priorities for the documents to be gathered.[75]

1R CONCLUSION OF THE DESK AUDIT

If a CO completes the desk audit and finds no problem areas, no outstanding questions and no violations, then the evaluation is closed at the desk audit stage. If the CO found nonsubstantive problems such as an unacceptable AAP element, the CO may close the compliance evaluation after all the identified problems are adequately resolved.

To close the compliance evaluation after the desk audit, the CO must ensure that no outstanding substantive issues exist. As previously noted, the CO may need to request additional materials from the contractor for review during the desk audit.

When the contractor submits the AAP with the support data, the desk audit should generally be completed in 45 days from receipt of the requested information. If, however, OFCCP provides an additional 30 days for the contractor to submit the support data using the one-time, 30-day extension for Itemized Listing information, the desk audit should be completed in 75 days.

1R00 DOCUMENTS FOR CLOSING COMPLIANCE EVALUATION AFTER THE DESK AUDIT

When closing a compliance evaluation after a desk audit, the CO will use one of the following closure documents:

a. A finding of no violations leads to the issuance of a closure letter;[76] or

b. A finding of violations, but no indicators of potential discrimination, leads to the issuance of either a closure letter that references any violations and their resolutions[77] or the issuance of an NOV.[78]

Whether to issue a closure notice that lists remedied violations or an NOV to be remedied by a CA is made on a case-by-case basis depending on the type and severity of the violation. Potential discrimination must be investigated further.

The appropriate supervisor must sign the closure document (*e.g.,* District Director or designee) and send the letter to the contractor by first-class mail.

---

[75] FCCM 2C03 – On-Site Plan.
[76] Letter L-5 – Notice of Closing Compliance Evaluation: No Violations Found.
[77] Letter L-6 – Notice of Closing: Violations Found and Resolved. This letter is used if an NOV is not being issued.
[78] See Chapter 8, Resolution of Noncompliance for procedures on issuing an NOV.

1R01 REASONS TO PROCEED WITH ON-SITE REVIEW

When appropriate, the CO should promote early and efficient corporate-wide compliance by examining whether it is possible to resolve indicators of discrimination and other material violations uncovered at the desk audit before proceeding to an on-site investigation.[79] If early resolution is not possible, the CO must proceed with an on-site review if:

- The contractor provided insufficient data to conclude the review at the desk audit stage;
- There are indicators of potential discrimination, failure to provide a completed AAP, complaints or problems that merit an on-site review; or
- The contractor has been identified for a complete compliance review following OFCCP selection procedures.

In instances where problems are resolved through a document submission during the desk audit, the CO's on-site review may consist of technical assistance to ensure that the contractor is aware of its obligations.[80]

1R02 COMPLETING APPROPRIATE SCER PAGES

COs must complete as much of the SCER as possible for every compliance evaluation. The CO must also sign the SCER. The stage at which the compliance evaluation is closed and the type of investigative procedures used in the compliance evaluation will determine which sections of the SCER COs must complete.

[79] See Directive 2019-02, "Early Resolution Procedures."
[80] FCCM 2L – Equal Opportunity Clause and Other Requirements.

CHAPTER 2
ON-SITE REVIEW

2A INTRODUCTION

This chapter describes the procedures COs follow when conducting the on-site review of a compliance evaluation for a supply and service contractor. During an on-site review, COs gather data and information from the contractors, employees, applicants and others to better assess the contractor's compliance with the regulations implementing Executive Order 11246, VEVRAA and Section 503,[81] and with any other appropriate mandates.[82] This chapter provides guidance to COs on how to prepare for, conduct and conclude an on-site review.

The nature and scope of the on-site review in each instance will vary depending on the type of compliance evaluation a CO is conducting and whether the CO has already identified potential problems. As noted in Chapter 1, Desk Audit, a compliance evaluation may consist of any one or any combination of the following investigative procedures.[83]

- Compliance Review. A comprehensive analysis and evaluation of the hiring and employment practices of the contractor, the written AAP, and the results of their affirmative action efforts. This procedure may proceed in three stages: desk audit, on-site review, and off-site analysis.

- Off-Site Review of Records. An analysis and evaluation of the AAP, or any part thereof, and supporting documentation.

- Compliance Check. A determination of whether the contractor maintained appropriate records consistent with 41 CFR 60-1.12, 41 CFR 60-300.80 and 41 CFR 60-741.80. At the contractor's option, the contractor may provide the documents on-site or off-site.

- Focused Review. An on-site review that is restricted to one or more components of the contractor's organization, or one or more aspects of the contractor's employment practices.

Of the four options, the compliance review is the most common and is typically the most comprehensive. For this reason, this chapter focuses on the specific procedures COs follow when conducting an on-site review as a part of a compliance review.[84] There are generally four major tasks in an on-site review:

---

[81] The regulations implementing Executive Order 11246 applicable to supply and service contractors are at 41 CFR Part 60-1, Obligations of Contractors and Subcontractors; 41 CFR Part 60-2, Affirmative Action Programs; and 41 CFR Part 60-3, Uniform Guidelines on Employee Selection Procedures. Part 60-20 contains the regulations specifically covering Discrimination on the Basis of Sex; and Part 60-50 contains the Guidelines on Discrimination Because of Religion or National Origin. VEVRAA implementing regulations are at 41 CFR Part 60-300, and the regulations implementing Section 503 are at 41 CFR Part 60-741.

[82] When on-site, OFCCP is responsible for assessing a contractor's compliance with Executive Order 13496, if applicable.

[83] 41 CFR 60-1.20, 41 CFR 60-300.60 and 41 CFR 60-741.60.

[84] In light of their more limited scope, focused reviews and compliance checks may not always include all of the elements discussed in this chapter.

- Investigating potential problem areas the CO identified at a desk audit;
- Verifying the contractor's implementation of its AAP(s) or its assertions regarding its personnel activity and employment practices, or both;
- Investigating matters that cannot be fully examined at the desk audit; and
- Initiating resolution of identified violations.

The on-site review principles discussed in this chapter also provide guidance for performing an on-site review as part of other types of reviews. If the compliance evaluation is of a contractor that maintains a FAAP, then the evaluation will essentially be the same as the other processes. A possible addition is on-site visits to more than one location to address all of the components of the FAAP. Chapter 5 discusses FAAP reviews in more detail.

A preaward compliance evaluation covers the contractor's compliance with Executive Order 11246, Section 503, and VEVRAA, and occurs primarily on-site unless it is converted to a postaward review.[85] The purpose of a preaward compliance evaluation is to determine whether a prospective prime contractor or known first-tier subcontractor will be able to comply with the provisions of the equal opportunity clauses for Executive Order 11246, Section 503, and VEVRAA. For preaward reviews, the desk audit is normally part of the on-site review at the contractor's establishment. COs conduct a postaward review in the same manner as a compliance review under 41 CFR 60-1.20(a)(1), 41 CFR 60-300.60(a)(1) and 41 CFR 60-741.60(a)(1), and they must cover a contractor's compliance with Executive Order 11246, Section 503 and VEVRAA.

Complaint investigations include an on-site review that responds to the specific allegations raised in the complaint unless OFCCP converts a complaint into a full compliance review. Complaint investigations are discussed in detail in Chapter 6, Complaint Investigations.

2B DETERMINING THE NEED FOR AN ON-SITE REVIEW

When OFCCP schedules a contractor for a compliance evaluation, the compliance evaluation may consist of one or a combination of investigative procedures, including a compliance review, an off-site review of records, a focused review or a compliance check. Though the majority of compliance reviews do not involve going on site, on-site reviews are a part of each full compliance review and each focused review. COs determine whether to conduct an on-site review in conjunction with an off-site review of records or a compliance check, based on the circumstances of the evaluation and the outcome of the initial review.

Typically, the CO may determine to conduct an on-site review if the desk audit reveals indicators of discrimination. However, even if a desk audit initially reveals discrimination indicators, an on-site review may not be necessary. In a portion of compliance evaluations, potential discrimination

[85] A preaward compliance evaluation is subject to specific timeframes and is conducted before the award of a nonconstruction contract of $10 million or more. See 41 CFR 60-1.20(d), 41 CFR 60-300.60(d) and 41 CFR 60-741.60(c). The preaward review requirement applies to prospective contractors and their known first-tier subcontractors with subcontracts of $10 million or more.

indicators will be resolved after the desk audit concludes but before OFCCP conducts an on-site review, during the "pre-on-site." One example of this is when the desk audit findings show that the required AAPs are acceptable, and then the contractor provides sufficient supplemental data during the pre-on-site stage to resolve desk audit discrimination indicators. In those cases, the CO may conclude the compliance evaluation after the desk audit with the approval of a supervisor. When sufficient explanation of any such disparities is not provided by the contractor, the CO must coordinate with the supervisor to prepare for an on-site review.

2C ON-SITE REVIEW PREPARATION

When conducting an on-site review, COs are neutral fact-finders and official representatives of the federal government. Consequently, COs must be unbiased in the identification and examination of all data and information that contributes to the full understanding of the contractor's employment practices and affirmative action efforts. COs must attempt to verify assertions made by the contractor regarding its affirmative action efforts, employment activity data and employment practices.

Before going on-site, COs must review a contractor's compliance evaluation and complaint history, develop an On-Site Plan, and provide advance notice of the on-site review to the contractor. A part of a CO's preparation includes sound information management and an awareness of employee concerns surrounding retaliation. The subsections below discuss these and other preparatory steps.

2C00 PROHIBITION AGAINST RETALIATION

COs must be concerned with gaining information that makes the on-site review useful to answering the question of whether the contractor complied with its obligations. If employees are afraid of cooperating for fear of retaliation, the on-site review could be compromised. COs should, therefore, take specific actions to notify and protect employees.

COs, when on-site, must inform the contractor's managers, employees and applicants that individuals exercising their rights under OFCCP's laws have protections from retaliation. Specifically, the regulations implementing Executive Order 11246, Section 503 and VEVRAA prohibit interference and intimidation of any individual exercising his or her rights under OFCCP's laws. The CO must give this notice to the contractor at the entrance and exit conferences, and include it as a part of any interview conducted during the on-site review.

The prohibition against interference and intimidation includes threats, coercion, harassment and discrimination. Retaliation may take the form of adverse employment actions such as termination, demotion, failure to hire and harassment. As with interference and intimidation, contractors may not retaliate against an individual for exercising his or her rights under the laws enforced by OFCCP. Specific activities protected from contractor interference, intimidation and retaliation include:

- Filing a complaint;
- Assisting or participating in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the Executive Order 11246, Section 503 and VEVRAA or other EEO laws;

- Opposing any act or practice that violates any of these EEO laws; and
- Exercising any other right afforded them by these laws.

2C01 USE OF THE STANDARD COMPLIANCE EVALUATION REPORT AND INFORMATION MANAGEMENT

a. *The Standard Compliance Evaluation Report*. The SCER documents the scope, progress and results of an on-site review.[86] It also includes notes confirming that a contractor met its obligations or describing any problem areas the CO identified during the desk audit, on-site review, and off-site analysis. A CO may not be able to complete the desk audit portion of the SCER because the quality of the desk audit data is inadequate or was insufficient. In that situation, the CO's initial task during the on-site review is to complete the desk audit portion of the SCER. You will find a copy of the SCER and instructions for completing it in Appendices A-1 SCER and A-2 SCER Instructions.

   With a full understanding of the contractor's employment practices and affirmative action efforts, a CO may identify new problems or find that the contractor resolved previously identified problems. COs must describe problems identified during the on-site review and record any recommendations for corrective actions to resolve problems.

b. *Obtaining and Maintaining Records*. All communications and information COs gather during the compliance evaluation must remain in the case file. Examples of information or data a CO might gather are data and record submissions by the contractor; information gathered from other sources such as applicants and employees; and interviews with contractor officials, employees and others. This includes all information obtained during the on-site review. In addition, COs must document their activities and communications in connection with the on-site review in the compliance evaluation or Case Chronology Log.[87]

   These are several of the general principles for properly maintaining records:

   - Every document collected during the review, even if it does not support the ultimate finding, is included in the case file. These documents include those in both paper and electronic formats.
   - All email and other written communications must be dated, identify the individuals participating in the communication, and accurately reflect any agreed commitments. For example, the emails in a CO and contractor email exchange discussing possible dates for the on-site review would reflect the CO's name and position, the name and position of the

[86] COs will not use all the pages of the SCER in every evaluation. Rather, which sections of the SCER are appropriate to each review will depend on the type of compliance evaluation. However, COs must complete all relevant SCER pages and sections.

[87] See FCCM 1B01 – Preparation and Maintenance of the Case Chronology Log; 1B02 – Creation and Maintenance of the Case File and Figure F-2 Case Chronology Log for additional information regarding the case file and Case Chronology Log.

contractor's representative, the dates proposed and the dates for the on-site review that were agreed upon.

- Original documents submitted by contractors or otherwise obtained by COs must not be altered. Alterations, including notes made by a CO, should be made on working copies.

- Interview statements, whether obtained by a CO in person or by telephone, must remain in the case file. These statements must include the name and position of the person conducting the interview, the name of the person interviewed and his or her title or position, the date and time of the interview, and the location of the interview. COs must also note if other people were present during the interview such as the legal counsel or a personal representative. Interviewees should review and sign the CO's interview notes and typed statement indicating that they are accurate. Section 2M of this chapter provides specific information on interviews.

- Information obtained during interviews and a CO's observations must be reduced to writing as soon as feasible. The CO must type handwritten notes, using MS Word, before placing them in the case file.

- Supporting evidence must be in a clearly labeled section of the case file. Supporting evidence may include the CO's notes, worksheets, contractor data and any other material related to specific problem areas identified by the CO.

2C02 HISTORICAL DATA AND COMPLAINT HISTORY

At desk audit, COs check the electronic CMS and the EIS to obtain a list of prior compliance evaluations of the establishment and identify any issues found in the previous OFCCP reviews. This information must be updated and reviewed when determining what to include in an On-Site Plan. As an example, if OFCCP obtained a CA in a prior review, the CO must use the on-site visit to confirm that the contractor took and maintained the required corrective actions. If the purpose of the on-site review is to address questions that arose as part of the monitoring of a CA, the CO must develop an Investigative Plan that addresses those specific questions.

If COs do not have current information regarding discrimination complaints filed against the contractor with other agencies, they must contact the EEOC and the appropriate state or local FEP agencies to ascertain the existence, nature, scope and status of any complaints. COs must include the replies or information obtained from these agencies in the case file and incorporate them, as appropriate, into the On-Site Plan.[88] In addition, COs should check the DOL's Enforcement Database[89] or reach out to other DOL agencies, such as the WHD or OSHA, for information on the compliance history of the establishment.

---

[88] See Letters L-2 for a sample letter requesting complaint data from EEOC and state and local FEPS.

[89] See *https://enforcedata.dol.gov/* (last accessed September 10, 2019). FCCM 1B05 and 1B06 also include discussions on gathering information from the EEOC and other agencies.

2C03 ON-SITE PLAN

An On-Site Plan is an important step and COs must develop one before each on-site review. Although the scope of the on-site review may change as a result of the on-site observations and evidence, the On-Site Plan serves as the initial outline or "road map" for conducting the on-site review. In some cases, it may be helpful to involve staff from the regional solicitor and DPO in devising the On-Site Plan. For contractors with complex compensation systems (such as education, information technology, finance, or healthcare sectors), attorneys and DPO statistical experts may help ensure that appropriate information, documents and data are obtained.[90]

The On-Site Plan must include each problem area identified during a desk audit and described on the SCER in Part B. For each problem area, the On-Site Plan must identify or describe the data and records the CO will obtain and review, interviews that the CO will conduct, and any other known relevant materials the CO will review while on-site. For example, additional information may include materials related to the desk audit findings such as personnel records, payroll records, applications and resumes, and materials not included in the original submission such as employment advertisements and position descriptions. In addition to individuals who are interviewed as a routine matter (for example, the human resources manager), interviewees should include individuals relevant to the investigation of any indicators of discrimination identified at the desk audit stage (for example, selection officials, employees and applicants).

The On-Site Plan must also include a list of technical items, such as the posting of the *Equal Employment Opportunity Is the Law* poster ("EEO is the Law" poster) and the required supplement, that the CO will verify while on-site. Additionally, the plan must identify field office staff who will participate in the on-site review, and their roles and responsibilities. The On-Site Plan must also include the projected dates for the on-site review, as discussed with the contractor.

If a CO is going on-site as part of a focused review, the On-Site Plan will reflect the more limited scope of this type of review. Similarly, if a CO is going on-site to conduct a compliance check, the On-Site Plan will be narrower because the plan will not encompass all of the elements of an On-Site Plan that the CO would develop for a comprehensive compliance review. When going on-site for a compliance check, COs must use the Compliance Check Control Sheet to record whether the contractor maintained the appropriate records or whether the contractor needs to provide additional information and documentation.[91]

2C04 NOTICE OF THE ON-SITE DATE AND REQUESTS FOR ADDITIONAL INFORMATION

In preparation for the on-site review, the CO must contact the contractor, or the contractor's representative, to schedule the on-site review. The CO must make any additional data requests beyond what the contractor provided at the desk audit during this pre-on-site stage, to refine indicators and prepare for a potential on-site visit. Supplemental information requests must include the basis for the request, be reasonably tailored to the areas of concern, and allow for a reasonable time to respond.

---

[90] See Appendix A-4 for a sample On-Site Plan.
[91] See Figure F-1 – Compliance Check Control Sheet.

Receipt of supplemental data may result in resolving the indicator(s) of potential violation(s) and, as such, no further investigation may be warranted. If problem areas remain, the CO will identify the contractor officials who will need to be available during the on-site review. The CO must also inform the contractor that he or she may need additional information and interviews related to identified problem areas as the on-site review progresses. Having such a discussion before the on-site visit provides the contractor with time to locate and make available requested information and interviewees.

The CO must provide the contractor with written confirmation of the on-site date(s) and time(s) at least three business days before the on-site visit.[92] This confirmation must also include a summary of the preliminary indicators of potential violations, requests for access to interviewees, as well as data and information that the CO is aware of needing at that time. The confirmation is sent to the contractor by certified mail, return receipt requested; however, a courtesy copy may be sent by email or facsimile.[93]

2D ON-SITE PROCESS

The on-site review typically progresses in several phases, including entrance conference, facility inspection, collecting contractor records, interviews, and exit conference. COs should make every effort to gather all necessary records and conduct all personnel interviews during the on-site review. However, it may be possible to conduct a return on-site visit if the CO identifies some change in the facts or circumstances that supports collecting additional data or conducting personnel interviews. One example of a change is when a contractor submits new information in response to a PDN, NOV, SCN, or during conciliation, and the CO needs to explore the new information further on-site.

Each phase of the on-site process has its unique challenges for COs and an overview of the phases is provided in the following subsections. Collecting contractor records and interviews are also discussed in more detail in sections 2E and 2F. After completing the on-site review and any needed return on-site visit, COs will analyze the information obtained on-site and record findings using the SCER.[94]

2D00 ENTRANCE CONFERENCE

The on-site review typically begins with an entrance conference with the CEO or highest ranking official in charge of the facility, his or her representative and senior officials who are responsible for implementing the AAP(s). The entrance conference will provide general information to the CEO and explain the purposes of the compliance evaluation. During this conference, a CO will, at a minimum, provide:

- A summary of the contractor's obligations under the programs administered by OFCCP;

---

[92] However, OFCCP reserves the right to waive the three-day advance notice if providing it could result in irreparable injury to the employment rights of affected employees or applicants.
[93] See L-7, Supply & Service On-Site Confirmation Letter.
[94] FCCM 2O, Investigation Summary or Report Writing.

- A description of the scope of the on-site review and the length of time that the CO anticipates being on-site; and
- A description of the information needed while on-site.

A CO must advise the contractor of the need to conduct confidential employee interviews. This includes informing the contractor that it does not have the right to have its representative present during an employee interview as either an observer or the employee's representative. It is possible that an employee could request the presence of the contractor's representative during the interview. Should this happen, the CO must determine whether the request is freely made and is not the result of a threat or coercion. The CO makes this determination based on speaking privately with the employee outside of the presence of the contractor's representative.

A CO may want to interview a management employee in some capacity other than as a manager for the contractor, for example, as a potential complainant or victim. This management employee is not required to have the contractor's representative present for the interview if he or she is not speaking on behalf of the contractor. The CO must make it clear to the contractor that nothing said by the management employee will be binding on the contractor. The determination of whether the management employee is a potential complainant or victim and whether the contractor's representative can be present is fact-specific. Therefore, COs should consult with the RSOL and the national office before engaging in these types of interviews.

During the conference, the CO will inform the CEO of the need to meet again to discuss tentative findings of the investigation, and any outstanding requests for data and information.[95]

2D01 FACILITY INSPECTION

The facility inspection is an opportunity for COs to observe and evaluate the working conditions in departments or other organizational units of a contractor's establishment. It is also an opportunity to observe the composition and concentration of groups by sex, race, ethnicity, and disability. COs also use the inspection process to observe work performed in different job titles, and to conduct brief focused interviews with supervisors and employees to obtain information about the facility and the work performed there. The CO will also conduct more formal interviews of supervisors, employees and the top union official, as appropriate, during the on-site visit.

By observing how employees complete their work, particularly in any job titles identified as problem areas, COs develop a better understanding of the functions and conditions of the job positions. This understanding contributes to a CO's ability to make decisions and assess matters such as the relationship of certain job criteria for selecting individuals for certain jobs. For example, if females are underrepresented in a particular job title for which "the ability to lift 50 pounds" is a selection criterion, a CO may observe that the job is done with mechanical equipment doing the lifting rather than the employee. Further, the CO may observe that employees rarely lift 50 pounds without assistance from another employee. This observation allows the CO to question the contractor regarding:

[95] See also 2C00 – Prohibition Against Retaliation.

- The timing and nature of the development of the selection criterion;
- The assessment that the criterion is job-related and consistent with business necessity;
- The changes in the selection process since the criterion's development;
- The point in the selection process when the selection criterion is applied; and
- The contractor's assessment of the validity of the selection criterion as a measure of whether an applicant can perform the job.

A facility inspection also allows COs to make observations regarding possible physical accessibility issues for employees with known disabilities. The presence of physical barriers does not mean that disability discrimination exists. Rather, a CO may use this opportunity to provide compliance assistance on providing reasonable accommodation to individuals with disabilities, including disabled veterans. The CO may also ask about the contractor's process for receiving and handling requests for accommodation.

During the inspection, COs must visually confirm the display of EEO posters and AAP policy statements required under Section 503 and VEVRAA. Contractors are required to conspicuously display the "EEO is the Law" poster, the required supplement and the notice of employee rights under the National Labor Relations Act (NLRA) required by Executive Order 13496.[96] Additionally, COs must observe and question, as appropriate, how the contractor provides notice to employees of the location and hours of availability of VEVRAA and Section 503 AAPs.[97] A CO must take notes during the inspection to record his or her observations, or record the observations immediately following the inspection. The CO must type handwritten notes, using MS Word, before placing them in the case file. During the inspection or during off-site analysis, the CO may verify electronic postings. The CO must document his or her observations and findings in the SCER.

In appropriate circumstances, COs may also take photographs. However, if a contractor objects to the CO taking photographs, the CO must stop taking photographs and notify the district office of the contractor's concern.

2D02 COLLECTING INFORMATION: ACCESS TO CONTRACTOR RECORDS

The agency's regulations require contractors to provide COs access to the contractor's books, records and accounts to determine the contractor's compliance with the laws administered by OFCCP.[98] When a CO knows that he or she will likely need to obtain copies of materials, the CO must initiate a discussion with the contractor regarding the need to obtain copies of materials before the on-site review. Working out the logistics for obtaining copies of requested materials before the on-site review may help the CO avoid conflicts. This may also be useful when scheduling the time

---

[96] FCCM 2L – Equal Opportunity Clauses and Other Requirements.
[97] 41 CFR 60-300.41 and 41 CFR 60-741.41.
[98] For a fuller discussion of the types of information that a CO might collect during an on-site review, see FCCM 2E – Collecting Information for Analysis

needed to obtain copies of the requested materials. If requested materials are available electronically, in a compatible format, the CO must accept the materials in electronic form. The CO must ensure that all requested data is present within the various materials.

Some of the types of records a CO will request and obtain before or during the on-site visit include:

- Job applications for every applicant for the jobs at issue;
- Personnel files;
- Relevant payroll and human resources information system (HRIS) data;
- Labor agreements;
- Policy and compensation manuals;
- Directives;
- Federal contracts, purchase orders and subcontracts;
- Company newsletters; and
- Externally and internally posted job opening announcements.

COs must photocopy, digitize, transcribe or summarize pertinent information, as appropriate. If summarizing, the CO must describe the source documents in detail and describe the summarizing process. Photocopied originals are preferable to document summaries.

If a contractor objects to providing photocopying facilities or if, for any other reason, the CO must use an off-site copying facility, the CO will take appropriate precautions to preserve, securely handle and maintain any personally identifiable information contained in these documents when removing original documents from the premises. COs must assure the contractor that the originals will be returned in a timely manner. It may also be helpful for COs, in coordination with a contractor official, to make a written inventory of the documents and materials that are being provided by the contractor for copying.

If the contractor refuses to provide access to materials or denies the CO the ability to copy requested materials, the CO will contact his or her supervisor to discuss the denial of access concerns. It may be necessary to prepare an SCN for denial of access following this discussion. Chapter 8, Resolution of Noncompliance, is a source of additional information on this particular point.

2D03 MANAGEMENT AND NONMANAGEMENT INTERVIEWS

One of the most important activities that COs perform during an on-site review is interviews with management and nonmanagement employees. When conducting the interviews, COs verify employment practices, policies, and procedures, and gain an understanding of the workplace EEO culture. It is imperative for COs to interview both management and nonmanagement employees to

ensure that they have multiple perspectives on how the contractor's affirmative action and nondiscrimination obligations have been implemented. A more detailed discussion covering interviews is in Section 2F below.

2D04 EXIT CONFERENCE

Upon completion of the necessary on-site review and evaluation of all information obtained, COs will discuss the tentative findings of the compliance evaluation with the contractor at the on-site exit conference. The on-site exit conference should be held with the contractor's CEO or designee. The CO will reiterate to the contractor that Executive Order 11246, Section 503 and VEVRAA prohibit intimidation of, or retaliation against, anyone assisting or participating in the investigation.[99] An exit conference does not mean that the on-site review is complete; therefore, COs should avoid making any statements that could lead the contractor to believe that the CO is no longer able to request a follow-up on-site or to seek additional information.

COs must schedule the exit conference for the final day of the on-site review. At this conference, the CO must be prepared to describe the aspects of the investigation and to discuss the tentative findings of the compliance evaluation in general terms. The CO will inform the CEO, or designee, of the next steps in the compliance evaluation process, of any outstanding or additional requests for information, and of the possibility that a PDN or NOV could be issued.

2D05 RETURN ON-SITE REVIEW AND DENIAL OF ACCESS

COs should make every effort to gather all necessary records and conduct all personnel interviews during the on-site review. If, however, the CO identifies the need for additional contractor records or personnel interviews after the on-site review ends, a return on-site review may be necessary. The CO must discuss this possibility with his or her supervisor.

When a second on-site visit is needed, the CO will follow the on-site procedures as described in this chapter. However, if the contractor can timely submit additional data or information without an on-site visit, the CO does not need to conduct a return on-site review, unless the contractor fails to provide the information.

If the contractor refuses to provide the requested data or information, or does not allow a follow-up on-site review, the CO will prepare an SCN for denial of access. More information on this issue is in Chapter 8, Resolution of Noncompliance.

2E COLLECTING INFORMATION FOR ANALYSIS

During the on-site review, the CO must obtain all available records necessary to secure a full understanding of the contractor's employment practices and processes, particularly how they apply to any employment actions, practices or processes that the CO is examining. It is likely that the CO will need to review and analyze the information after the on-site review, during the off-site analysis part of the compliance review. For example, the CO may need to conduct analyses to determine whether disparate treatment and/or disparate impact have occurred using information gathered on-

[99] See also 2C00 – Prohibition Against Retaliation.

site on both favored and nonfavored groups being investigated. This off-site analysis must commence immediately after the on-site review is complete.

Generally, the review period begins two years before the contractor's receipt of the Scheduling Letter and ends when the violations that were identified are corrected and remedied. This, of course, assumes that coverage is established for the full review period. The CO may need updated records and data for the period following the start of the review to update the information initially submitted by the contractor or to investigate issues first identified on-site. For example, the CO must request data relevant to the potential discrimination issues identified at the desk audit to determine how long any such violation extends. Such information is necessary for the CO to ensure that the contractor stops any identified discrimination and to determine what remedies victims need if they are to be made whole. The CO may also need to review information relating to periods more than two years before the contractor's receipt of the Scheduling Letter where the potential for continuing violations exists.

The data collected should include, but not be limited to, applications for all applicants, test results, all interview notes, personnel files, policies and procedures, employment data and other contractor documentation relevant to the issues being examined by the CO during the on-site review. The CO must also request employment data that the contractor had not previously submitted. For example, if a review of information indicates that the contractor did not include its entire workforce in its AAP(s),[100] the CO should request data and information regarding this determination. The CO will examine whether the contractor's determination not to include these workers as employees was correct or whether that decision improperly omitted or misclassified workers. If the contractor misclassified the workers or otherwise should have included them in the contractor's AAP(s), the CO must consider the employment data for these employees in the analyses.

To ensure the CO obtains all needed information, he or she makes a list, in advance, of the data and other information needed from the contractor, before departure from the on-site review. The CO must update this list, adding new items as the CO becomes aware of them, and recording when he or she received the requested or needed items.

2E00 TYPES OF EVIDENCE

The CO will obtain, review and analyze employment data, documents, policies, procedures, interview statements and observations throughout the review. An example of an observation that might be significant is the absence of women working on the loading dock. The CO will examine all the information to assess whether sufficient evidence exists to determine whether prohibited discrimination or other violation occurred during the review period. If either did occur, the CO must determine whether the discrimination or other violation is ongoing.

There are two broad types of evidence: direct evidence and circumstantial evidence. Direct evidence is evidence that, if true, directly proves a fact. For example, an email from the contractor's director instructing supervisors not to hire women into certain jobs or a statement by a

[100] For example, a contractor may have excluded temporary workers and independent contractors from its AAP. Temporary workers who were employees as of the contractor's AAP date should be accounted for in the AAP. It is permissible for the contractor to exclude independent contractors from its AAP, as long as they are properly classified as independent contractors and not employees.

manager that "we don't hire women here" would constitute direct evidence of discrimination against women. In contrast, circumstantial evidence is evidence that relies on an inference to prove a fact. For example, three standard deviations in the selection rates for similarly situated blacks and whites within the laborer job group is circumstantial evidence of discrimination against blacks. The statistics do not *directly* prove discrimination but can raise an inference of discrimination.

The CO may use direct evidence and circumstantial evidence, either alone or in combination, to prove discrimination. The key question when determining if the contractor has engaged in discrimination is assessing whether the evidence, direct or circumstantial or both, satisfies the appropriate burden of proof of discrimination.

OFCCP performs statistical analyses during its compliance evaluations and also seeks a variety of other types of nonstatistical evidence. Anecdotal evidence, a type of nonstatistical evidence, often supports statistical evidence of discrimination in systemic cases. Anecdotal evidence, which may be either direct or circumstantial, may consist of first-hand accounts of personal experiences with discrimination by the contractor at issue that brings "the cold numbers convincingly to life." *International Brotherhood of Teamsters v. United States,* 41 U.S. 324, 339 (1977). Documents the contractor submits may contain anecdotal evidence, or COs may obtain anecdotal evidence from interviews with managers, employees, or applicants. In determining which cases to pursue, OFCCP will be less likely to pursue a matter where the statistical data are not corroborated by nonstatistical evidence of discrimination unless the statistical evidence is exceptionally strong. In some cases, OFCCP may find systemic discrimination based only on anecdotal evidence that directly supports a pattern or practice of discrimination.

For example, the company president sends an email to managers stating his concern that women are unable to lift heavy objects and that, if women are hired for stockroom positions, there will be a higher risk of on the job injuries that will impact the company's profitability. This anecdotal evidence could support a finding of discrimination against women applicants for stockroom positions at that establishment.

2E01 PERSONNEL ACTIVITY AND SELECTION PROCESS

During the on-site review, it is imperative the CO must develop an understanding of the contractor's employment procedures and practices. This activity includes obtaining copies of selection policies and procedures related to areas where the CO identified potential discrimination during the desk audit. The CO can also garner crucial information from interviews of human resources personnel, selecting officials, employees (*e.g.,* hired, promoted or terminated during the review period) and other individuals identified as participating in or being affected by the selection process, such as those who were applicants or candidates for open positions but were not hired or promoted. The CO must also gather contact information for potentially knowledgeable individuals no longer employed by the contractor, if applicable.

The type of information the CO will gather depends on issues identified at the desk audit. Some examples are provided below.

- *Hiring Data.* This includes job group and/or job title identification, copies of personnel files, payroll records, job applications, job announcements, staffing requisitions, advertisements (internal and external postings), job descriptions, job status (*e.g.,* permanent, temporary, full or

part-time), minimum qualifications, preferences, applicant flow data, documentation created at each stage of the selection process (*e.g.,* selecting officials' interview notes or computerized screening of internet applicants), phone screen procedures and testing information.

- *Promotions*. This includes identification of lines of promotion, copies of personnel files, payroll records, promotion policies and procedures, internal advertisements and bid sheets, candidate flow data for eligible candidates, payroll data, documentation created at each stage of the promotion process (*e.g.,* officials' interview notes), phone screen procedures and testing information.

- *Terminations*. This includes job group and/or title identification, copies of personnel files, payroll records, information regarding voluntary and involuntary terminations, termination policies and procedures, documentation of the reason for termination, exit interview notes and documentation, termination letters and contact information for terminated employees.

2E02 SELECTION PROCEDURES AND TESTING

As noted in subsection 2L05 below, the UGESP at 41 CFR 60-3.3A states that using any facially neutral selection procedure or criterion resulting in an adverse impact on hiring, promoting or other employment opportunities of members of any race, sex or ethnic group is discriminatory unless the contractor proves that its use is justified. Information that the CO will obtain to assess whether the contractor's selection procedures or criteria have an adverse impact may include:

- A written description of the selection steps and criteria applied;

- A copy of the job description(s);

- A copy of all records the contractor created to implement the selection procedures or criteria during the review period. Examples of these records include test results, individual test scores, instruction manuals related to testing or selection procedures, interview forms and interview results. When the selection process includes a battery of tests, the CO must be sure to collect the scores for each part of the battery, as well as the composite or overall scores, and learn how the contractor determined them. If the contractor is administering a test at a specific location, it is often helpful to see the testing location;

- Signed interview statements from the contractor representatives who administered the selection procedure during the review period. The interviews need to include information about how the contractor administered the selection procedure, when they initiated the procedure, whether the contractor made any changes to the procedure, and when and why the changes were made. Additional information would include whether the contractor validated the selection procedure[101] and whether there were any efforts to minimize the adverse impact. If efforts were made, COs must determine what those efforts were;

- A copy of all job analyses or job information describing how the contractor established job requirements; and

[101] Validation means demonstrating that using the selection procedure met the validation standards of the UGESP.

- Copies of any validation studies conducted by the contractor.

Example interview questions the CO will ask may include these areas of inquiry:

- What are the selection procedures and criteria?
- How does the contractor administer the selection procedures? Are interviews and tests conducted in similar settings? Are the interviews and tests conducted by multiple individuals? Who administers each procedure? Who is the decision maker for each procedure?
- How did the contractor score or rate each selection procedure or criterion, or both? Is there a passing score set for each one? Is the score weighted? How was it weighted and why? Does the contractor score or rate the candidates cumulatively? If so, how?
- How does the contractor select or "pass" candidates on the selection procedure (*e.g.,* total test score, based on performance during an interview)?
- How did the contractor come to use the selection procedure? If the procedure was a test, did the contractor develop it internally or was it developed by an external contractor or vendor? Did the contractor purchase a pencil and paper test?
- If the CO has identified adverse impact at any stage of the selection process, is the use of the procedure or criterion responsible for that impact justified by business necessity? What has the contractor done to consider alternative procedures with less impact? What actions did the contractor take to validate the selection procedure or test? Are there any validation reports or studies? Did the contractor consider such reports or studies, or both?

2E03 COMPENSATION

Investigation of potential compensation discrimination presents complex and nuanced issues. This subsection discusses approaches COs may take to analyze a contractor's compensation policies and practices, as well as the pay transparency provision that contractors must follow to ensure that applicants and employees can freely inquire about, discuss and disclose their compensation.

a. Analyzing Compensation. The choice of the best approach for a case depends upon the underlying facts, the available data, and the contractor's compensation system and practices. As such, OFCCP takes a case-by-case approach to analyze compensation issues. In every case, there are three key questions to be addressed and the on-site review may provide data or information necessary to answer them:

- Is there a measurable difference in compensation on the basis of sex, race or ethnicity?[102]

[102] In situations where there are sufficient data and analytic power to use regression analysis, a measurable difference generally means a statistically significant difference, two standard deviations. In the situation of disparities in small groups and/or individual compensation, a measurable difference and sufficient evidence will be determined in conformance with Title VII principles.

- Is the difference in compensation between employees who are comparable under the contractor's wage or salary system?
- Is there a legitimate, nondiscriminatory explanation for the difference?

An on-site review may include analysis of workforce data and contractor compensation policies and practices; interviewing personnel and employees; examining payroll and HRIS data; and any other information necessary to understand or analyze compensation data or practices. In conducting the on-site review, COs examine all employment practices that have the potential to lead to compensation disparities. Prior desk audit results may assist the CO in identifying particular practices or issues to investigate.

Compensation means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment. Compensation may include, but is 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. Compensation discrimination includes unexplained and unmerited differences in how employees earn, or contractors distribute, compensation in these areas based on sex, race or ethnicity. In examining compensation issues, COs must be mindful to include how the contractor treats fringe benefits. For example, if the contractor is not providing equal fringe benefits and/or not making equal contributions to insurance plans or pensions for men and women, this may constitute discrimination.

The compensation a group of employees or an individual employee receives may be negatively affected by the denial of equal access to certain earnings opportunities. COs must examine employee access to opportunities affecting compensation such as higher-paying positions, job classifications, work assignments, training, preferred or higher-paid shift work, and other such opportunities. COs should also examine policies and practices that unfairly limit a group's opportunity to earn higher pay such as "glass ceiling" issues and access to overtime hours, pay increases, incentive compensation, and higher commission or desired sales territories. Differences may be observed in these and other areas including:

- Base salary;
- Job assignment or placement;
- Opportunities to receive training, promotions, and other opportunities for advancement;
- Earnings opportunities; and
- Access to salary increases or add-ons such as bonuses.

COs must focus the on-site review on the information and practices relevant to the employer, industry, and types of workers. For example, overtime issues are relevant to hourly and nonexempt workforces, while high-level salaried positions may involve substantial bonuses, stock options and other incentive compensation. For sales employees, both commission and account or territory assignment practices may be relevant.

In addition to reviewing potential evidence of systemic pay discrimination, COs may use on-site reviews to determine if there is sufficient evidence to support an inference that individual or cohort pay differences are due to discrimination. Absolute pay differences between comparators, without any other evidence of pretext or possible discrimination, generally are not sufficient to support an individual disparate treatment analysis.

For purposes of evaluating compensation differences, employees are similarly situated where it is reasonable to expect they should be receiving equivalent compensation absent discrimination. Relevant factors in determining similarity may include tasks performed, skills, effort, level of responsibility, working conditions, job difficulty, minimum qualifications and other objective factors. In some cases, employees are similarly situated where they are comparable on some of these factors, even if they are not similar on others. For example, when evaluating a job assignment issue, workers are similarly situated when their qualifications are comparable, even if they are assigned to jobs at different levels. Who are similarly situated for purposes of an individual analysis or review of a single specific employment decision may be determined based on different criteria than when conducting a systemic discrimination analysis. On-site reviews allow COs to make assessments of similarly situated employees or jobs by observing, by conducting interviews, and by reviewing documents.

OFCCP will evaluate, on a case-by-case basis, information from the contractor regarding the factors the contractor considered in making compensation decisions. A factor is an element that the contractor offers to explain differences in employee compensation under its compensation system and practices. Factors may include internal and external elements potentially affecting compensation. A factor may be a qualification or skill that the worker brings to the position such as education or experience. It may also be an employment element such as position, level or function, tenure in position or performance ratings.

COs will use information gathered at the on-site review to evaluate whether factors identified by the contractor actually explain compensation, whether they are implemented fairly and consistently, whether data regarding the factors are accurate and whether the factors should be incorporated into the CO's compensation analysis.

The CO must also confirm that the amount of compensation offered to individuals with disabilities (including veterans with disabilities) is not reduced due to them receiving a reasonable accommodation or any disability income, pension or other benefit received from another source. To verify compliance with this requirement, the CO will request the files of identified individuals with disabilities and/or disabled veterans, along with those of people without disabilities in the same job titles, and compare their compensation.

b. *Pay Transparency.* During the on-site review, the CO must evaluate whether the contractor has any policies that forbid applicants or employees from inquiring about, discussing or disclosing their compensation.[103] COs must verify that applicants and employees are not disciplined, discharged or in any way discriminated against for discussing their compensation by reviewing company policies and practices, and by interviewing employees and managers. COs must also determine whether the contractor has disseminated the Pay Transparency Nondiscrimination

[103] See 41 CFR 60-1.4(a)(3).

Provision either by electronic posting or by posting hard copies of the provision in conspicuous places available to employees and applicants.[104]

Even employees whose essential job functions include access to the compensation of other employees or applicants, such as payroll personnel, are protected from discharge or other forms of discrimination when discussing or disclosing their *own* compensation. However, contractors can restrict these employees from disclosing the compensation of *other* applicants or employees when they have a duty to protect that compensation information. Still, there are some circumstances when employees with such essential job functions may disclose the compensation of other employees or applicants. For example, they may disclose compensation data of other employees and applicants to a CO during an OFCCP compliance evaluation. They may also disclose the compensation of other employees or applicants in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing or action, including an investigation conducted by the employer, or if the disclosure is consistent with the contractor's legal duty to furnish information. Further, these employees may disclose the compensation of other applicants or employees based on information that they received through means other than essential job functions access. Similarly, these employees may pursue their own possible compensation discrimination claim or discuss possible disparities involving the compensation of other employees to a management official with the contractor or while using the contractor's internal complaint process.

2F INTERVIEWS

Based on the results of the desk audit, the CO will develop an On-Site Plan that includes interviews of contractor management, employees (current and former) and applicants, as appropriate. The CO must meet with the contractor's staff members who are knowledgeable about employment policies and practices. During these interviews, the CO will clarify any questions he or she may have regarding the contractor's organization, structure, corporate culture and other issues identified during the desk audit. This is also the CO's opportunity to become more familiar with the contractor's informal or unwritten policies and practices, and to compare these to written materials and practices outlined in the AAP. Interviews with employees and applicants may provide further information regarding the application of the contractor's procedures.

If reasonable accommodation for an interviewee is necessary, the CO will arrange for the interviewee to receive the accommodation. Additionally, if the interviewee needs a translator, the CO will arrange for this in advance of the interview or schedule the interview to ensure translation services are present.

2F00 GENERAL INTERVIEW PRINCIPLES AND PROCEDURES

Interviews may be informal or formal. An informal interview may occur during the facility inspection while a formal interview occurs during a scheduled meeting with a pre-planned interview outline or list of questions.

[104] For more on the Pay Transparency Nondiscrimination Provision posting requirements, see FCCM 2M00(b).

As the on-site review proceeds, there will be continuing discussions between COs and contractor personnel. COs must document in writing the content of these discussions as soon as possible. It is necessary for COs to review their notes of these discussions with the interviewee to ensure the notes accurately reflect the interviewee's statements.

a. *Reason for Interview*. CO-initiated interviews are conducted with an identified purpose or goal. Reasons for interviews may include:

   - Gaining understanding of contractor policies and procedures;
   - Obtaining relevant general information;
   - Corroborating information received from other sources; and
   - Identifying additional areas for investigation.

   Depending on the results of the desk audit, the CO will pay specific attention to the contractor's employment practices including compensation, hiring, termination and promotion practices. The CO will also conduct interviews with managers and employees that focus on contractor practices concerning EEO under the laws OFCCP enforces.

b. *Interview Plan*. As a part of the On-Site Plan, the CO must develop appropriate interview outlines and/or questions and identify specific individuals to interview regarding each identified potential problem area or compliance issue. Each planned interview or group of interviews should have an Interview Plan that lists the topics the interview needs to address, including specific questions, if appropriate. Interview Plans will vary depending on whether the interviewee is a manager, other employee, or an unsuccessful candidate for hire, among other considerations. If there is an individual that the CO identified for an interview but did not interview, the CO will make a note in the case file as to why the interview did not take place.

c. *Informing the Interviewee*. The CO will tell each interviewee at the outset of a formal interview that:

   - The CO will show the interviewee his or her statement containing the answers to the questions asked during the interview; and
   - The CO will ask the interviewee to sign his or her statement.

   The CO will inform each interviewee that knowingly providing false or inaccurate information is unlawful and will explain that the following phrase is included in the interview notes where the interviewee signs:

   "I have read the above and it is true and accurate to the best of my knowledge."

   In addition, the CO must inform interviewees that the interview is kept confidential to the maximum extent possible. The CO must also inform all interviewees, regardless of their position with the contractor, that it is unlawful for the contractor to intimidate them or take retaliatory action against them for participating in an interview.

d. *Contractor Representative Present at Interviews*. When the CO conducts on-site interviews with nonmanagement personnel, the contractor does not have the right to have a representative present. However, when the CO conducts interviews with upper-level managers and directors that speak for, or make decisions on behalf of, the company, the contractor may have an attorney or another representative present. If the contractor wants a representative present during management interviews, the CO must first obtain written confirmation of the representation, including the contact information for the representative and the scope of the representative's authority.[105]

   A management employee is not required to have the contractor's representative present for the interview if he or she is not speaking on behalf of the contractor. An example may be when the manager is a member of a potentially affected group speaking about the potential discrimination, or his or her personal experience; or acting as a whistleblower. In that situation, the CO may need to contact the employee directly after the on-site review to conduct the interview off-site without the contractor's representative present. The CO must make it clear to the contractor that nothing said by the management employee will be binding on the contractor. The determination of whether the management employee is a potential complainant or victim and whether the contractor's representative can be present is fact-specific. Therefore, COs should consult with the RSOL and the national office before engaging in these types of interviews.

e. *Employee Representative Present at Interviews*. An employee may request that a personal representative, such as a union representative or personal legal counsel, accompany him or her during the interview. Subject to the limitations described below, such a request is generally acceptable. However, the CO must discuss the presence of the representative with the interviewee privately to determine whether there may be a conflict of interest or whether the interviewee feels pressured into having the person present. When the employee wants a personal representative present during the interview, the CO must first obtain written confirmation of the representation including the contact information for the representative and the scope of the representative's authority, if the CO does not already have the written confirmation.

   The contractor does not have the right to have one of its representatives present during an employee interview – either as an observer or as the employee representative. If a nonmanagement employee wants a representative present, including a member of management, then the CO must honor the request. The CO can and should meet with the employee alone for the limited purpose of confirming that he or she was not coerced into asking for a management representative. The CO must consult with RSOL if there are any questions about the impact of the presence of a third party on confidentiality or privileges.

f. *Preparing Formal Interview Statements*. After a formal interview, the CO must ask each interviewee to read, sign and date an interview statement. Immediately, at the conclusion of the interview, the CO will review the questions asked and the answers given, and obtain confirmation that any direct quotes are accurate and that all paraphrases convey the interviewee's intended meaning. The CO will promptly type the handwritten interview notes

---

[105] See FCCM 1B00 for more details on what to request in the written confirmation of representation. If the CO already has written confirmation of the representative from the desk audit phase, there is no need to ask for it again.

using MS Word in order to provide the interviewee with a formal interview statement to sign as soon as possible after the interview. The CO must enter the following phrase above the space where the interviewee will sign on the formal interview statement:

"I have read the above and it is a true and accurate to the best of my knowledge."

If the CO cannot print a copy of the interview statement during the on-site review, the CO must ask the interviewee to sign and date the CO's interview notes. The CO will mail or email the typed interview statement as soon as possible after the on-site review for the interviewee to sign and date. If the interviewee wants corrections made, the CO must incorporate the corrections and re-send the statement for the interviewee to sign. The CO maintains records of interview notes and each version of the interview statement in the case file. If an interviewee refuses to sign an interview statement, the CO will record this and the reason(s) for refusal to sign, if known.

g. *Contact Information.* At the conclusion of every interview, the CO must obtain the interviewee's personal mailing address, contact telephone number, and email address. The CO must also provide each interviewee with his or her office contact information in the event the interviewee wants to add anything to his or her statement.

h. *Informal (Unplanned) Interviews*. At any point in the on-site review process, a potential witness may approach the CO to provide information related to the review. The CO must make every effort to meet or otherwise interview the potential witness. The CO will follow the interview procedures described in this section.

   If, however, the potential witness is unwilling to be interviewed and only wants to provide the information, the CO must document the conditions under which the employee provided the information in a memorandum. For example, the CO records that the employee provided the CO with a document, briefly describes and attaches the document to the memorandum, and indicates in the memorandum that he or she was unwilling to be interviewed. The CO must then use other means to verify the credibility of the information provided in this manner.

i. *Location of Interviews*. COs normally conduct interviews during the on-site review phase of the compliance evaluation. However, the CO may conduct interviews via telephone, as appropriate. There may be situations when a contractor refuses to allow on-site interviews of nonmanagerial employees, when the CO needs to interview former employees, or when employees want their interviews conducted away from the establishment. When possible, the CO will attempt to explore alternatives with the contractor or the employee, as appropriate. One possible alternative is conducting interviews during meal breaks. Other options might include interviewing an employee on-site before the start of work shifts, or at the end of his or her shift. A CO may also conduct interviews at an off-site location.

j. *Telephone Interviews*. COs conduct telephone interviews only when it is not feasible to conduct the interview in person since the CO cannot observe the interviewee's demeanor during a telephone interview, making credibility determinations more difficult. However, when telephone interviews of employees or applicants are necessary, the CO must type the resulting notes and send a copy to the interviewee for review, revisions, as appropriate, and signature. As with in-person interviews, COs will ask whether there is anyone else present with the interviewee to address any concerns this may create, as described above.

k. *CO is Unable to Conduct Interview*. If the CO is unable to conduct an interview, he or she should add a memorandum to the file explaining who was supposed to be interviewed, and why the interview did not occur.

2F01 MANAGEMENT INTERVIEWS

COs must identify the managers that played a role in making employment decisions that the COs determine, through the desk audit review or other on-site analysis, need clarification. Examples of the types of questions that COs should ask and include in the Interview Plan are below.

- How did the contractor make the personnel or other decision? What procedures were used? Are these procedures customarily used? Are exceptions made to these procedures? If so, under what circumstances or when are exceptions made?

- How were the qualification criteria evaluated?

- What was the decision process? What was your role in the process or personnel action? Were you the sole decision-maker or part of a team of decision-makers? On what did you base the decision and what information did you have when making the decision?

- Is the contractor making efforts to reach out to or establish linkages with groups representing veterans, individuals with disabilities, women and minorities? Describe those efforts.

COs should always be alert to opportunities to ask necessary follow-up questions and pursue unexpected avenues of inquiry that open up during the interview.

2F02 EMPLOYEE INTERVIEWS

When on-site, COs must interview current employees including those identified as possible members of an adversely affected class and members of the favored group. The COs must also interview other individuals who may have information that is relevant to potential problem areas. Examples of the types of information that COs should plan to obtain during the interview are below. COs should always be alert to opportunities to ask necessary follow-up questions and pursue unexpected avenues of inquiry that open up during the interview.

- Do you know whether management uniformly applies [describe the practice or procedure under investigation]? Does management make exceptions to the process? If so, under what circumstances or when are exceptions made?

- Do you have first-hand experience with the practice or procedure? If so, explain when and under what circumstances?

- What are the duties associated with the job at issue? Are the qualifications for the job necessary or related to job performance?

- Are you aware of company policies and procedures related to EEO? Do any of them prohibit the discussion of compensation?

- Are you aware of any instances where the company violated EEO policies?
- Do you know anyone else who might have knowledge about this practice or procedure?

2F03 ISSUES THAT ARISE DURING THE ON-SITE REVIEW

During the on-site review, or while interviewing employees and managers, issues may arise that were not identified during the desk audit review. If this happens, the CO must appropriately follow up on the new issues. If the issue concerns a possible systemic violation by the contractor or is relevant to the compliance evaluation in progress, the CO must include the matter in the ongoing investigation. If the matter is one alleging an individual instance of discrimination, or if someone files a complaint during the ongoing compliance review, the CO must discuss the matter with his or her supervisor to determine how to best proceed.[106]

2G EXECUTIVE ORDER 11246 AAP REQUIREMENTS

This section discusses the on-site review of identified problems related to the Executive Order 11246 AAP and Itemized Listing data, as well as the contractor's evaluation of its total employment process, identification of problem areas, development of action-oriented programs, and internal audit and reporting system.[107] During an on-site review, COs can also review more in-depth whether the contractor has made good faith efforts to remove identified barriers to EEO. For each of the Executive Order 11246 AAP elements, COs must indicate on the corresponding SCER section any problem areas identified during the on-site review and confirmation of any corrective actions taken by the contractor.

The SCER will also include references to relevant evidence COs obtained during the on-site review and recommendations for any appropriate corrective action. It is important to note that COs may need to conduct an off-site analysis of evidence gathered during the on-site review to ensure a full understanding of the contractor's personnel activities and practices, and to appropriately identify problem areas that may constitute a violation requiring corrective action.

2G00 EXECUTIVE ORDER 11246 AAP AND ITEMIZED LISTING DATA PROBLEMS

During the desk audit, a CO examines the contractor's AAP and Itemized Listing data to determine completeness or whether the contractor included all the required elements, and whether the Executive Order AAP and support data are acceptable. Part B of the SCER is used to report any problems in these elements. Before going on-site, the CO develops an On-Site Plan that reflects how the CO will address the identified problem areas during the on-site review.[108]

As part of the on-site review, COs must assess the contractor's implementation of its AAP(s). Often, the entrance conference will include a discussion of unresolved AAP deficiencies, especially if the official responsible for preparing and implementing the AAP(s) is present. During this discussion, the CO also explains which aspects of the program are unacceptable and why they are

---

[106] See also FCCM Chapter 6 – Complaint Investigations.
[107] FCCM 1F – Review of Executive Order AAP and Itemized Listing Data for Acceptability.
[108] See FCCM 2C03 – Onsite Plan.

unacceptable. The CO will also request that the contractor provide any additional information or documentation that the CO needs that the contractor did not provide before the on-site review.

2G01 DESIGNATION OF RESPONSIBILITY FOR THE AAP

The contractor's appointment of a person to be responsible for implementing the AAP must be an executive who has the authority and resources to ensure that the AAP is put into practice. COs must obtain a copy of the responsible official's position description to ensure that it includes implementing the AAP. During the interview, the official responsible for the AAP's implementation must describe how the specific provisions of the AAP are implemented. The roles of the interviewed officials in developing and implementing the AAP must be the same as specified in the written AAP. If they are not the same, COs must ask the contractor for an explanation.

2G02 IDENTIFICATION OF PROBLEM AREAS: WHERE IMPEDIMENTS TO EQUAL EMPLOYMENT OPPORTUNITY EXIST

The contactor's in-depth analysis of its total employment process in its AAP should indicate whether and where impediments to EEO exist based on its utilization, personnel activity (*e.g.,* applicant flow, hires, terminations, promotions, other personnel actions), compensation analysis, and selection procedures. In evaluating these employment processes, COs determine whether there are any disparities based on race, sex or ethnicity.

During interviews with individuals who contributed to the development and implementation of the AAP, and individuals who are involved in the hiring or selection process, COs must discuss the contractor's identified problem areas to determine how the contractor identified each problem, the scope of the problem, what solutions the contractor implemented and the effectiveness of the actions taken.

COs must also specifically examine records on the contractor's employment activity, and selection criteria and processes to understand the contractor's total employment process, and verify whether the contractor identified all of the impediments to EEO. Questions that may be useful to COs are provided below.

- Did the contractor review its selection criteria?
- Did the contractor apply the criteria in a nondiscriminatory manner and determine whether the selection criteria might have an adverse impact?
- Did the contractor perform validity studies on any criteria found to have an adverse impact, and did the contractor properly determine the criteria to be job-related and consistent with business necessity?
- How frequently does the contractor review selection criteria?
- How does the contractor document the review?
- Do the contractor's efforts comply with the UGESP at 41 CFR Part 60-3?

- Did the contractor ensure that the officials and managers responsible for applying selection criteria and procedures are familiar with, and are implementing, the contractor's EEO policies? Does the contractor provide training? If so, how frequently is training provided?

In its AAP, the contractor should identify concentrations and absences of any specific protected group within its workforce. During the on-site review, COs must seek to identify any job titles for which there are significantly high or low representations of any protected group. COs must incorporate questions regarding these circumstances into the interviews with the contractor's supervisors and employees.

COs must remember to record either their confirmation or description of problem areas identified in Part B of the SCER. The SCER must also include a description of any identified or implemented problem resolutions.

2G03 ACTION-ORIENTED PROGRAMS TO CORRECT PROBLEM AREAS

Contractors are required to design action-oriented programs to address any specific barriers to EEO that are identified during the contractor's in-depth analysis of its total employment process. The programs should specifically describe who is responsible for implementing the program, what actions the contractor will take, and when and how the program will work.

For the programs to be effective, contractors must ensure that they are doing more than following the same procedures that previously produced inadequate results. COs must use the on-site review to gather the information they need to determine whether the contractor identified all the impediments to EEO.

The on-site review often illustrates the contractor's compliance with this requirement when COs investigate other issues. For example, in requesting copies of position descriptions and discussing them with personnel, a CO can determine how recently the contractor reviewed the descriptions; if the descriptions are accurate; and if the contractor's selection process screens for the knowledge, skills and abilities related to the position descriptions. If the descriptions are not accurate, this may be indicative of a problem area. Additionally, when the CO questions interviewees like the contractor officials, employees and third parties about the contractor's recruitment and outreach efforts, the CO can obtain information related to the action-oriented nature and relative success of these efforts.

2G04 EVALUATION OF GOOD FAITH EFFORTS

During an on-site review, COs have the opportunity to evaluate whether the contractor made good faith efforts to remove identified barriers to EEO, expand employment opportunities and produce measurable results. COs must assess good faith efforts on a case-by-case basis, taking into account all of the relevant facts and circumstances. However, in most situations, good faith efforts will produce positive, measurable results. When a contractor's efforts have not produced such results, COs must ask the contractor to explain the following:

- Why did the efforts undertaken not produce positive, measurable results?
- Did the contractor make additional or alternative efforts?

- If the contractor took additional or alternative efforts, and they did not produce positive, measurable results – why?

During the desk audit, COs evaluate the contractor's past goal attainment and progress on meeting current goals, and identify any goal areas requiring further evaluation of good faith efforts. To make informed judgments about the quality of the contractor's good faith efforts, COs must be familiar with the local area's community resources, a list of which is maintained in each field office. COs should also be familiar with the Employment Referral Resource Directory (ERRD) maintained on the OFCCP website.[109] The list of community resources may include nonprofit groups, EEO organizations, faith-based groups and caregiver support groups that can assist contractors in attaining their goals.

During the on-site review, COs explore the contractor's good faith efforts to address all identified problem areas through interviews with contractor officials, employees and other pertinent parties.[110] For each of the activities listed below, COs must identify and obtain documentation that provides evidence of the extent of the contractor's good faith efforts.

a. Good Faith Efforts – Internal Placements. For internal placements through actions like hiring and promoting current employees, good faith may include the contractor's efforts to address barriers to opportunities for women and minorities. Possible areas of inquiry on this point are listed below.

- *Disseminating Information about Internal Opportunities.* Are job openings posted? If so, are they posted where all potentially eligible employees would see them? Are all jobs posted, or only certain jobs or classes of jobs? Why? Are jobs posted promptly? Is there adequate time to apply?

- *Providing Training Opportunities.* Does the contractor provide apprenticeship programs? On-the-job training? Tuition reimbursement? If so, for which employees are these opportunities available? Are training opportunities provided without regard to sex, race or ethnicity? Do participation rates vary by sex, race and/or ethnicity and, if so, why?

- *Providing Counseling and Encouraging Employees to Apply for Internal Openings.* How does this occur? How often? What is included in the counseling or encouragement? Does the contractor periodically assess whether its efforts are successful? Are counseling and encouragement available for caregivers without regard to sex, race or ethnicity?

- *Recruiting Externally into Feeder Job Groups.* What recruitment efforts is the contractor making? What resources is the contractor using?

- *Reviewing Selection Criteria and Selection Procedures.* Did the contractor review its selection criteria and determine whether it is applying them in a nondiscriminatory manner? Do the selection criteria have a disparate impact? How does the contractor document the review? Did the contractor ensure that the officials and managers responsible for applying

---

[109] The ERRD is available at *https://ofccp.dol-esa.gov/errd/* (last checked September 10, 2019). Also, see FCCM 1B08 for a discussion of community resources.

[110] See also FCCM 1L – Analysis of E0 11246 AAP: Goals Progress and Good Faith Efforts.

selection criteria and procedures are familiar with, and are implementing, the contractor's EEO policies? Is the contractor providing training? How frequently?

b. *Good Faith Efforts* – External Placements. For external placement opportunities, evaluation of the contractor's good faith efforts may include exploring the below areas.

- *Recruitment Sources in the AAP.* Does the contractor use the recruitment sources listed in its AAP to ensure that its recruitment will reach minorities and women? If so, when and how? How does the contractor track the results that each recruitment source yields? This inquiry includes the CO contacting at least some of the listed organizations to confirm and assess the contractor's use of the organization as a recruitment source.

- *Using Other Recruitment Sources.* Does the contractor use other recruitment sources that are not listed in its AAP to ensure that its recruitment will reach minorities and women? How does the recruitment source provide assistance and support regarding caregiver issues? What are the recruitment sources? How useful have they been?

- *Using the Media.* How are job openings advertised? Among its advertisements, does the contractor advertise in publications or other media that are targeted to minorities and women? If so, which ones?

- *Recruiting at Schools and Universities.* Does the contractor's recruitment at high schools, colleges, and universities include those that enroll large numbers of minorities and women? If so, which ones?

c. *Good Faith Efforts – Applicant Flow Data.* Applicant flow data may provide useful documentation about the effectiveness of the contractor's good faith efforts, as can internal bid lists and applications for posted job openings.

- *Increased Representation Rate.* Does either the applicant flow data or the bid lists, or both, show an increase in previously underrepresented groups in the applicant pool? If so, for what positions did this occur?

- *Decreased Representation Rate.* If there are no changes, or there are decreases in representation, what alternative actions have the contractor taken or proposed to take in the future?

COs must record findings on the contractor's good faith efforts in Part B of the SCER, and include supporting documentation and other relevant evidence in the case file. This evidence includes materials such as copies of correspondence, job orders, bid lists for posted job openings, contractor recruiting manuals, relevant pages from labor agreements, employee manuals, and summaries of conversations and interviews with contractor representatives, employees, applicants and recruitment source contacts.

2G05 INTERNAL AUDIT AND REPORTING SYSTEM TO MEASURE EFFECTIVENESS OF TOTAL AFFIRMATIVE ACTION PROGRAM

The contractor must design and implement internal audit and reporting systems that measure the effectiveness of the total AAP. During an on-site review, COs must ask appropriate officials, including management, how the contractor conducts its audits and request documentation of how the contractor reports the results of internal EEO and affirmative action audits. COs must request documentation in the form of copies of reports or copies of minutes of meetings.

Below are several examples of relevant questions COs should ask contractors about their auditing and reporting system.

- How does the contractor audit its personnel activity to ensure the nondiscrimination policy is carried out?
- Who is responsible for conducting the audit?
- What is involved in the audit?
- How frequently does the contractor conduct the audit?
- What is the schedule for the contractor's report on whether and to what degree EEO and organizational objectives are obtained?
- When and how is the report reviewed by each level of management? Do the CEO and other high ranking officials receive the report?
- What types of recommendations have been made to improve when the report indicates that the total AAP is ineffective?

2H SECTION 503 AAP AND ADDITIONAL REQUIREMENTS

As discussed in Chapter 1, covered contractors must prepare, maintain and update on an annual basis, an AAP for individuals with disabilities. COs use the on-site review to investigate problem areas they identified during the desk audit, to gather further information regarding the AAPs and their implementation, and to learn more about the contractor's employment activities and personnel practices. To gather information related to the Section 503 AAP obligations, COs must interview contractor officials, employees and others, as appropriate. They must also identify and obtain documentation that evidences the contractor's compliance efforts. This information is recorded in the SCER Parts B and C.

If the contractor opts to prepare a combined Section 503 and VEVRAA AAP, the CO must ensure that the combined AAP includes all the elements required under each law. When reviewing a combined AAP, COs should pay particular attention to the differences in the laws to ensure the contractor's combined AAP captures all the required elements.

For example, Section 503 requires an annual analysis of the contractor's utilization of individuals with disabilities and, where the contractor does not meet its goal, it must determine whether and where there are barriers to equal employment and develop action-oriented programs to correct any identified problem areas. VEVRAA, however, does not require a utilization analysis; it requires contractors to establish an annual hiring benchmark by which they can measure their progress toward achieving EEO for veterans. Under VEVRAA, there is not a requirement to identify problem areas or develop action-oriented programs. As this example illustrates, even though there is some overlap between Section 503 and VEVRAA AAPs, there are some differences that a CO must consider when reviewing Section 503 and VEVRAA AAPs for compliance.

2H00 SECTION 503 AAP AND ITEMIZED LISTING DATA SUBMISSIONS

During the desk audit, COs examine the Section 503 AAP and Itemized Listing data to ensure the submission includes the required content and determines whether the AAP and support data are acceptable. During the on-site review, COs interview contractor officials and others regarding the development and implementation of the AAP, and obtain documentation evidencing the same. COs record any problems identified during the desk audit in the SCER Part A. Any problems COs identify during the on-site review are noted in the SCER Parts B and C, as appropriate. COs must examine whether the contractor satisfied the following elements that are required parts of Section 503 AAP.

a. *Equal Opportunity Policy Statement.* COs must verify that the policy statement is clearly posted on bulletin boards in an accessible location. COs must examine the policy statement to determine if it is current, noting whether the person responsible for implementing the AAP is named.[111]

b. *Review of Personnel Processes.* COs may need to ask several questions to confirm a contractor's review of personnel processes that include, but are not limited to, those stated below.

   - Does the contractor periodically review personnel processes to ensure that the qualifications of individuals with disabilities for jobs, training and promotion are fully considered, and that individuals with disabilities have equal access to the personnel processes to apply for such opportunities? How often is this done?

   - What procedures has the contractor designed to facilitate the periodic review?

   - How does the contractor document its review of personnel processes and any actions it takes? How is that review conducted and by whom?

   - Have there been requests to modify personnel practices as a reasonable accommodation? How did the contractor respond to the requests?

   COs must obtain and review all relevant documentation, including procedures, reports and personnel files. COs must also determine whether the contractor's personnel processes provide for the careful, thorough and systematic consideration of the job qualifications of applicants and

[111] FCCM 1G01.

employees with known disabilities for job vacancies, either for hire or promotion, and for all training opportunities.

c. *Review of Physical and Mental Job Qualifications*. The contractor is obligated to periodically review the physical and mental qualifications of its jobs, and to eliminate those qualifications that tend to screen out qualified individuals on the basis of disability and are not job-related and consistent with business necessity. The Section 503 AAP must contain a schedule for this periodic review. While on-site, the CO must request samples of any mental or physical job qualification standards and interview individuals responsible for their periodic review.

To assess the contractor's review of its physical and mental job qualifications, COs should consider the following questions:

- When did the contractor write or last update the job descriptions? Do the job descriptions accurately reflect the duties of the job? Do the job descriptions require the employee or applicant to perform duties in a specific way? If so, and those requirements tend to screen out qualified individuals on the basis of disability, is there a business necessity for performing the duties in this way or are there alternate ways the duties can be performed satisfactorily?

- Are there job qualifications that would tend to screen out individuals based on disability? For example, an unassisted lifting requirement may screen out individuals with disabilities even though employees are not required to lift unassisted.

- Are those job qualifications based on business necessity? If not, are there alternative qualifications that the contractor can use?

- Are there positions that do not have written job descriptions? If so, how does the contractor identify and review job qualifications?

d. *Provide Needed Reasonable Accommodation to Physical and Mental Limitations*. Contractors must provide needed reasonable accommodation to the known physical and mental limitations of qualified individuals with disabilities unless the accommodation would cause an undue hardship. Accommodations may include, but are not limited to:

- Modifying work places and making work places and other contractor facilities used by employees accessible;

- Restructuring of nonessential functions of jobs;

- Allowing essential functions to be performed in a different way;

- Assigning nonessential functions of the job to other employees;

- Providing readers, sign language interpreters or assistive devices;

- Providing part-time work, flexible hours, or telework; and

- Reassigning employees to a vacant position.

COs should inquire whether there is a process in place by which individuals can request needed accommodations, how requests for accommodations are processed, and whether the contractor has provided accommodations as a matter of affirmative action. COs must also determine whether officials responsible for implementing the accommodation obligation are appropriately trained to address requests for accommodation. COs must also review the contractor's accommodation request records that were not already reviewed at the desk audit to assess whether the contractor responds to requests promptly and appropriately. All accommodations made by the contractor must be effective. Generally, this means the contractor must provide the person who needs the accommodation the ability to perform essential job duties. In the case of an applicant, reasonable accommodation could include, for example, providing an alternate means for applying and being considered for employment other than through an online application system. If requests for accommodation were denied, COs must obtain documentation reflecting these decisions and the basis for the decisions to ensure that the denials were proper.

e. *Develop and Implement Procedures to Prevent Harassment*. COs must confirm that the contractor developed and implemented procedures to ensure that employees are not harassed because of their disability status. COs should request a copy of these procedures, interview the official responsible for implementation, and review reports or internal investigations of alleged harassment based on disability status and the contractor's response.

f. *Disseminate EEO Policy Externally and Perform Outreach and Positive Recruitment*. While on-site, COs must request documentation showing that subcontractors were notified of the contractor's affirmative action policy, requesting appropriate action on the part of the subcontractors. Additionally, COs must verify during the on-site review that the contractor engaged in outreach and positive recruitment activities, evaluated the effectiveness of each outreach or recruitment activity, and assessed the total effectiveness of all of its efforts combined. While on-site, the CO must request documentation for all its outreach activities and assessments for the three years prior to the AAP year, as well as any documentation of efforts during and after the AAP year. If the documentation and assessments show that the contractor's efforts were not effective, the CO must determine whether the contractor has implemented alternative efforts to identify qualified individuals with disabilities.[112] COs may also refer contractors to OFCCP's ERRD or other community resource databases that could serve as a recruitment resource.

g. *Disseminate EEO Policy Internally*. The AAP should clearly describe the methods the contractor used to disseminate its EEO policy internally. During the on-site review, COs must verify that the contractor actually implemented these measures.[113] COs must obtain documentation and verify through interviews that the internal dissemination activities identified in the AAP occurred.

---

[112] For examples of outreach and recruitment activities, see 41 CFR 60-741.44(f)(2).
[113] 41 CFR 60-741.44(g).

h. *Design and Implement an Audit and Reporting System.* COs must confirm that the contractor has an audit and reporting system that, among other requirements, measures the overall effectiveness of its AAP. To do this, the CO must request documentation of the contractor's actions to implement the audit and reporting system, as described in the AAP. COs should obtain documentation of past audit(s), any remedial actions taken and their effectiveness. The COs may conduct interviews with responsible officials and employees.

i. *Designate an Official to Implement the AAP.* While on-site, COs may seek an interview with the official named in the AAP to determine their specific responsibilities and the authority assigned to that individual, and how the official assesses the implementation of the AAP. COs must obtain documentation, such as a copy of the individual's position description, copies of reports the individual has prepared and supporting documentation for any assessments the official conducted.

j. *Train Personnel to Ensure that the Contractor Implements EEO and AAP Commitments*. COs must interview contractor staff, managers and officials to confirm that the contractor's personnel involved in the recruitment, screening, selection, promotion, discipline and related processes have been trained to ensure that the commitments in the AAP are implemented. Questions relevant to this determination include:

- Does the contractor provide training to personnel? What type of training does the contractor provide? When, how frequently, and by whom is this training provided?
- What are the trainer's qualifications?
- Did the trainer use training materials? What were they?

If the trainer used written training materials, the CO must request a copy.

k. *Analyze Data Collected on Applicants and Hires with Disabilities*. If, during the desk audit or on-site review, COs identify problems related to the contractor's Section 503 affirmative action obligations, COs must request the total number of applicants and hires for all jobs, total number of applicants and hires with known disabilities, total number of job openings and total number of jobs filled, going back three years from the beginning of the contractor's current AAP year.[114] For a contractor that is six months or more into the current AAP year, COs may also request records the contractor collected after the beginning of its current AAP year so that the CO can calculate the totals of applicants, hires, job openings, and jobs filled. In some instances, the contractor may have already computed these totals. These requests must also be made to verify accuracy if COs detect data integrity problems at the desk audit or during the on-site review.

COs may use these data to inform their determinations on the effectiveness of the contractor's outreach and positive recruitment activities, and whether the contractor's personnel processes allow for the careful, systematic and thorough consideration of the job qualifications of qualified individuals with disabilities. Some relevant questions might include:

[114] 41 CFR 741.44(k).

- How does the contractor use the totals of applicants, hires, job openings and jobs filled as a criterion when determining the effectiveness of its outreach efforts?
- If the totality of its outreach efforts were not effective in identifying and recruiting individuals with disabilities, what alternative efforts did the contractor implement (see examples at 41 CFR 60-741.44(f)(2))?
- Does the data indicate any potential problem with the personnel processes utilized by the contractor when considering job qualifications of applicants and employees with disabilities for job vacancies filled either by hiring or promotion?

2H01 AVAILABILITY OF AAP FOR INSPECTION

COs must confirm that the contractor posted a notice, available to both employees and applicants for employment, stating that the Section 503 AAP is available to any employee or applicant for employment to inspect, upon request. When the contractor conducts personnel-related business through the Internet, such as recruiting and disseminating employment notices, COs should strongly encourage the contractor to post the AAP notice electronically. The notice must include the location and hours during which the AAP may be obtained. An example of possible acceptable language is, "The AAP is available in the personnel office during regular business hours." Confidential information or information that would allow for the identification of individuals with disabilities must not be made available for inspection as part of the Section 503 AAP.[115]

2H02 INVITATION TO SELF-IDENTIFY AS AN INDIVIDUAL WITH A DISABILITY

Contractors must offer each applicant the opportunity to self-identify as an individual with a disability under Section 503 at both the pre-offer and post-offer phases of the hiring process.[116] Within the first year of being subject to Section 503, contractors must also extend the invitation to self-identify to all of its employees and at five-year intervals thereafter. In the intervening years, contractors are required to remind employees, at least once, that they may voluntarily update their disability status at any time.[117] This data on applicants and employees with disabilities will be used by contractors to perform other components in their AAPs, such as the utilization analysis and the annual assessment of the effectiveness of outreach and positive recruitment efforts. 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.[118]

a. *Voluntary Self-Identification of Disability Form.* Under Section 503, the invitation to self-identify must be made by the contractor using the Voluntary Self-Identification of Disability form (Form CC-305) that is authorized by the OMB.[119] Some contractors may prefer to create an electronically fillable version of the form used to invite self-identification. Electronically

---

[115] 41 CFR 60-741.41.
[116] See 41 CFR 741.42 (a-b).
[117] See 41 CFR 741.42 (c).
[118] See 41 CFR 741.42 (e).
[119] The form, with OMB Control Number 1250-0005, is available in several languages at http://www.dol.gov/ofccp/regs/compliance/sec503/Self_ID_Forms/SelfIDForms.htm (last checked September 10, 2019).

fillable versions are permitted, provided that the electronic version meets certain requirements. The e-form must:

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

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

Some contractors may find that it is necessary to make nonsubstantive changes to the self-identification form to ensure that the form is accessible to employees and job applicants with disabilities. Contractors seeking to ensure that the form they use is accessible are allowed to alter the margins of the form, change the color of the section headings, remove or change the color of the border surrounding the text of the form, or make other similar nonsubstantive changes. Contractors may also use HTML to make the form accessible. However, contractors may NOT:

- Alter the content (*i.e.*, text or wording) of the form;
- Alter the order of the content on the form; or
- Alter the form or make changes that diminish the general accessibility of the form.

b. *On-site Verification of Contractors' Invitations to Self-Identify*. During an on-site review, COs must request a sample of completed self-identification invitations to verify that the contractor uses the OMB-approved form. COs also must review any memoranda, emails or other form of communication that contractors use to invite employees and applicants to self-identify, or that contractors use to discuss or encourage self-identification. In examining these documents, COs must determine whether the contractor's invitation to self-identify is completely voluntary, and whether the contractor is following the required process to invite applicants at the pre-offer and post-offer phases of the hiring process. In addition, COs must determine whether the contractor extended this invitation to employees within the first year of being subject to Section 503 and at least every five years thereafter, with a reminder notice at least once during the years between employee invitations.

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-disclose disability requirement.

- *Paper Invitations*. A contractor that invites voluntary self-identification of disability by using paper copies of the OFCCP self-identification form must retain either the hard copies

of the completed self-identification forms or electronic copies (*e.g.,* pdf, scanned, etc.) 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 of disability must either:
  - Retain electronic copies (*e.g.,* pdf, scanned, etc.) 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; or
  - 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 they delivered and/or displayed the voluntary invitation to self-identify. This demonstration allows COs to verify that contractors met their obligation to use the OMB-approved form.

Depending on the focus of the on-site review, COs may examine the application or personnel file, or both, of each individual who self-identifies as having a disability; and review employment data indicating whether the contractor hired these individuals and, if not, the reason for nonselection. COs will also examine whether the individual requested a reasonable accommodation for application or employment and, if so, review the appropriate accommodation records to determine whether the contractor handled the accommodation request appropriately. If the contractor denied an accommodation request, COs must determine whether the denial was proper and whether, if needed, the contractor provided a suitable alternative accommodation without undue delay. If any concerns are identified, COs will also interview the affected applicants, employees and others, as appropriate.

2H03 DISABILITY-RELATED INQUIRIES, MEDICAL EXAMS, AND CONFIDENTIALITY OF DISABILITY INFORMATION

a. *Disability-Related Questions and Medical Examinations*. Aside from disability inquiries undertaken as a matter of affirmative action pursuant to federal, state, or local law, such as the invitation for voluntary self-identification, Section 503 prohibits contractors from asking applicants disability-related questions or questions that are likely to elicit information about a disability prior to a conditional offer of employment. The law also prohibits contractors from conducting or requiring medical examinations of applicants *until after a conditional job offer is made*. Once the contractor makes a conditional job offer, the contractor may ask disability-related questions and require medical examinations, regardless of whether they are related to the job, as long as this is done for all entering employees in the same job. COs must determine whether the contractor improperly made disability-related inquiries or inquiries likely to elicit information about a disability on the job application itself or during the selection process, and whether the contractor administered medical examinations prematurely. On-site, a CO must

obtain a copy of the application and forms related to the application process. COs should also ask whether the application process includes medical exams, at what stage the exams are used, and how the exams are used.

Mandatory disability-related inquires and medical examinations of *employees*, such as return to work exams and periodic physicals, are permissible only when, and to the extent that, they are job-related and consistent with business necessity. The CO may ask the contractor whether, under what circumstances, and how it uses exams to determine whether an employee is fit for duty to return to work. The contractor may not use information obtained as a result of such a lawful inquiry or exam in a way that discriminates on the basis of disability. Drug tests for the illegal use of drugs are not medical exams.

b. *Confidentiality Requirement.* The contractor must keep any information about disability (other than completed voluntary self-identification forms) or information related to medical exams in a separate, confidential medical file and not with personnel or data analysis files.[120] However, government officials investigating compliance with EEO laws may have access; the contractor may inform supervisors and managers of necessary restrictions or needed reasonable accommodations, and the contractor may inform first aid and safety personnel of any needs. COs must make an assessment of acceptability of the contractor's system for maintaining confidentiality of medical information, including inspecting where the records are kept, who has access to the records and why, and measures that ensure confidentiality of the records.

2I VEVRAA AAP AND ADDITIONAL REQUIREMENTS

As discussed in Chapter 1, contractors must prepare, maintain and update on an annual basis, an AAP for protected veterans under VEVRAA. COs use the on-site review to investigate problem areas they identified during the desk audit, to gather further information regarding the AAPs and their implementation, and to learn more about the contractor's employment activities and personnel practices. To gather information related to the VEVRAA AAP obligations, COs must interview contractor officials, employees and others, as appropriate. They must also identify and obtain documentation that evidences the contractor's compliance efforts. This information is recorded in the SCER Parts B and C.

If the contractor opts to prepare a combined Section 503 and VEVRAA AAP, the CO must ensure that the combined AAP includes all the elements required under each law. When reviewing a combined AAP, COs should pay particular attention to the differences in the laws to ensure the contractor's combined AAP captures all the required elements.

For example, Section 503 requires an annual analysis of the contractor's utilization of individuals with disabilities and, where the contractor does not meet its goal, it must determine whether and where there are barriers to equal employment and develop action-oriented programs to correct any identified problem areas. VEVRAA, however, does not require a utilization analysis. It requires contractors to establish an annual hiring benchmark by which they can measure their progress toward achieving EEO for veterans. Under VEVRAA, there is not a requirement to identify

[120] Self-identification information must be kept in a separate data analysis file. 41 CFR 60-741.42(e).

problem areas or develop action-oriented programs. As this example illustrates, even though there is some overlap between Section 503 and VEVRAA AAPs, there are some stark differences that a CO must consider when reviewing Section 503 and VEVRAA AAPs for compliance.

2I00 VEVRAA AAP AND ITEMIZED LISTING DATA SUBMISSIONS

During the desk audit, COs examine the VEVRAA AAP and support data to ensure it includes the required content, and determines whether the AAP and support data are acceptable. During the on-site review, COs interview contractor officials and others regarding the development and implementation of the AAP, and obtain documentation evidencing the same. COs record any problems identified during the desk audit and any problems identified during the on-site review in the SCER Parts B and C, as appropriate. COs must examine whether the contractor satisfied the following elements that are required parts of VEVRAA AAP:

a. *Equal Opportunity Policy Statement.* COs must verify that the policy statement is clearly posted on bulletin boards, and that the contractor has ensured that the notice is provided in a form that is accessible and understandable to disabled veterans. COs must examine the policy statement to determine if it is current, noting whether the person responsible for implementing the AAP is named.[121]

b. *Review of Personnel Processes.* COs may need to ask several questions to confirm a contractor's review of personnel processes that include, but are not limited to:

   - Does the contractor periodically review personnel processes to ensure that the qualifications of protected veterans for jobs, training and promotion are fully considered, and that it relies only on the portion of a protected veteran's military record that is relevant to the requirements of opportunity for which the veteran is being considered? How often is this done?

   - What procedures has the contractor designed to facilitate the periodic review?

   - How does the contractor document its review of personnel processes and any actions it takes? How is that review conducted and by whom?

   - Have there been requests from disabled veterans to modify personnel practices as a reasonable accommodation? How did the contractor respond to the requests?

   COs must obtain and review all relevant documentation, including procedures, reports and personnel files. COs must also must determine whether the contractor's personnel processes provide for the careful, thorough and systematic consideration of the job qualifications of applicants and employees who are known to be protected veterans for job vacancies, either for hire or promotion, and for all training opportunities.

c. *Review of Physical and Mental Job Qualifications*. The contractor is obligated to periodically review the physical and mental qualifications of its jobs and to eliminate those qualifications that tend to screen out qualified disabled veterans, and are not job-related and consistent with

[121] See Chapter 1H01.

business necessity. The VEVRAA AAP must contain a schedule for this periodic review. While on-site, the CO must request samples of any mental or physical job qualification standards and interview individuals responsible for their periodic review.

To assess the contractor's review of its physical and mental job qualifications, COs should consider the following questions:

- When did the contractor write or last update the job descriptions? Do the job descriptions accurately reflect the duties of the job? Do the job descriptions require the employee or applicant to perform duties in a specific way? If so, and those requirements tend to screen out qualified disabled veterans, is there a business necessity for performing the duties in this way, or are there alternative ways the duties can be satisfactorily performed?

- Are there job qualifications that would tend to screen out disabled veterans? For example, an unassisted lifting requirement may screen out individuals with disabilities even though employees are not required to lift unassisted. Are those job qualifications based on business necessity? If not, are there alternative qualifications that the contractor can use?

- Are the contractor's job qualifications based on business necessity? If not, are there alternative qualifications that the contractor can use?

- Are there positions that do not have written job descriptions? If so, how does the contractor identify and review job qualifications?

d. *Provide Needed Reasonable Accommodation to Physical and Mental Limitations*. Contractors must provide needed reasonable accommodation to the known physical and mental limitations of qualified disabled veterans unless the accommodation would cause an undue hardship. Accommodations may include, but are not limited to:

- Modifying work places and making work places and other contractor facilities used by employees accessible;

- Restructuring of nonessential functions of jobs;

- Allowing essential functions to be performed in a different way;

- Assigning nonessential functions of the job to other employees;

- Providing readers, sign language interpreters or assistive devices;

- Providing part-time work, flexible hours, or telework; and

- Reassigning employees to a vacant position.

COs should inquire whether there is a process in place by which individuals can request needed accommodations and how requests for accommodations are processed. COs must also determine whether officials responsible for implementing the accommodation obligation are appropriately trained to address requests for accommodation. COs must also review the

contractor's accommodation request records that were not already reviewed at the desk audit to assess whether the contractor responds to requests promptly and appropriately. All accommodations made by the contractor must be effective. Generally, this means the contractor must provide the person who needs the accommodation the ability to perform essential job duties. In the case of an applicant, reasonable accommodation could include, for example, providing an alternate means for applying and being considered for employment other than an online application system. If requests for accommodation were denied, COs must obtain documentation reflecting these decisions and the basis for the decisions to ensure that the denials were proper.

e. *Develop and Implement Procedures to Prevent Harassment*. COs must confirm that the contractor developed and implemented procedures to ensure that employees are not harassed because of their status as a protected veteran. COs request a copy of these procedures, interview the official responsible for implementation, and review reports or internal investigations of alleged harassment based on protected veteran status and the contractor's response.

f. *Disseminate EEO Policy Externally and Perform Outreach and Positive Recruitment*. While on-site, COs must request documentation showing that subcontractors were notified in writing of the contractor's affirmative action policy, requesting appropriate action on the part of the subcontractors. Additionally, COs must verify during the on-site review that the contractor engaged in appropriate outreach and positive recruitment activities, evaluated the effectiveness of each outreach or recruitment activity, and assessed the total effectiveness of all of its efforts combined. While on-site, the CO must request documentation for all the contractor's outreach activities and assessments for the three years prior to the AAP year, as well as any documentation of efforts during and after the AAP year. If the documentation and assessments show that the contractor's efforts were not effective, the CO must determine whether the contractor has implemented alternative efforts to identify qualified protected veterans.[122] COs may also refer contractors to OFCCP's ERRD or other community resource databases that could serve as a recruitment resource.

g. *Disseminate EEO Policy Internally*. The AAP should clearly describe the methods the contractor used to disseminate its EEO policy internally. During the on-site review, COs must verify that the contractor actually implemented the required measures in 41 CFR 60-300.44(g)(2), and investigate whether the contractor additionally disseminated the policy in other ways, such as those suggested in 41 CFR 60-300.44(g)(3). They must also obtain documentation and verify through interviews that the internal dissemination activities identified in the AAP occurred.

h. *Design and Implement an Audit and Reporting System.* COs must confirm that the contractor has an audit and reporting system that, among other requirements, measures the overall effectiveness of its AAP.[123] To do this, the CO must request documentation of the contractor's actions to implement the audit and reporting system, as described in the AAP. COs should obtain documentation of past audit(s), any remedial actions taken and their effectiveness. The COs may conduct interviews with responsible officials and employees.

---

[122] For examples of outreach and recruitment activities, see 41 CFR 60-300.44(f)(2).
[123] 41 CFR 60-300.44(h).

i. *Designate an Official to Implement the AAP*. While on-site, COs may seek an interview with the official named in the AAP to determine their specific responsibilities and the authority assigned to that individual, and how the official assesses the implementation of the AAP. COs must obtain documentation, such as a copy of the individual's position description, copies of reports the individual has prepared, and supporting documentation for any assessments the official conducted.

j. *Train Personnel to Ensure that the Contractor Implements EEO and AAP Commitments*. COs must interview contractor staff, managers and officials to confirm that the contractor's personnel involved in the recruitment, screening, selection, promotion, discipline and related processes have been trained to ensure that the commitments in the AAP are implemented. Questions relevant to this determination include:

- Does the contractor provide training to personnel? What type of training does the contractor provide? When, how frequently and by whom is this training provided?
- What are the trainer's qualifications?
- Did the trainer use training materials? What were they?

If the trainer used written training materials, the CO must request a copy.

k. *Analyze Data Collected on Applicants and Hires Who Identified as Protected Veterans*. If, during the desk audit or on-site review, COs identify problems related to the contractor's VEVRAA affirmative action obligations, COs must request the total number of applicants and hires for all jobs, total number of applicants and hires who are known protected veterans, total number of job openings and total number of jobs filled, going back three years from the beginning of the contractor's current AAP year.[124] For a contractor that is six months or more into the current AAP year, COs may also request the contractor's records from the beginning of the current AAP year so that the CO can calculate the totals of applicants, hires, job openings and jobs filled. In some instances, the contractor may have already computed the totals. These requests must also be made to verify accuracy if COs detect data integrity problems at the desk audit or during the on-site review.

COs may use these data to inform their determinations on the effectiveness of the contractor's outreach and positive recruitment activities, and whether the contractor's personnel processes allow for the careful, systematic and thorough consideration of the job qualifications of qualified protected veterans. Some relevant questions might include:

- How does the contractor use the totals of applicants, hires, job openings and jobs filled as a criterion when determining the effectiveness of its outreach efforts?
- If the totality of its outreach efforts were not effective in identifying and recruiting protected veterans, what alternative efforts did the contractor implement (see examples at 41 CFR 60-300.44(f)(2))?

[124] 41 CFR 60-300.44(k).

- Does the data indicate any potential problem with the personnel processes utilized by the contractor when considering job qualifications of applicants and employees who are known protected veterans for job vacancies filled either by hiring or promotion?

l. *Verifying the VEVRAA Hiring Benchmark.* The VEVRAA regulations require contractors to establish a hiring benchmark every year to use for measuring their progress toward achieving EEO for protected veterans. Contractors must use one of two methods to establish their benchmarks. Contractors may choose to establish a benchmark equal to the national percentage of veterans in the civilian labor force, which is published and annually updated on OFCCP's website. Alternatively, contractors may establish their own benchmarks by taking into account certain data from the BLS and VETS/ETA that is also published on the OFCCP website, as well as other factors that reflect the contractor's own data and unique hiring circumstances.[125]

During the on-site review, COs must request the data and methodology used by the contractor to set its benchmark during the on-site review if the contractor sets its own hiring benchmark instead of using the benchmark provided by OFCCP. COs will use the underlying data to verify the contractor's hiring benchmark, if this verification was not completed during the desk audit.

2I01 AVAILABILITY OF AAP FOR INSPECTION

COs must confirm that the contractor posted a notice, available to both employees and applicants for employment, stating that the VEVRAA AAP is available to any employee or applicant for employment to inspect, upon request. When the contractor conducts personnel-related business through the Internet, such as recruiting and disseminating employment notices, COs should strongly encourage the contractor to post the AAP notice electronically. The notice must include the location and hours during which the AAP may be obtained. An example of possible acceptable language is, "The AAP is available in the personnel office during regular business hours." Confidential information or information that would allow for the identification of protected veterans must not be made available for inspection as part of the VEVRAA AAP.[126]

2I02 INVITATION TO SELF-IDENTIFY AS A PROTECTED VETERAN

Contractors must offer each applicant the opportunity to self-identify as a protected veteran under VEVRAA at both the pre-offer and post-offer phases of the hiring process.[127] This data on applicants will be used by contractors to perform other components in their AAPs, such as the annual assessment of the effectiveness of outreach and positive recruitment efforts. The information is also used by the contractor to complete the annual VETS-4212 form. Contractors are required to keep all information on self-identification confidential.[128]

COs must confirm that the invitation for applicants to self-identify as protected veterans under VEVRAA is voluntary. The contractor must not use an applicant's refusal to self-identify to subject the applicant to any adverse treatment.

---

[125] 41 CFR 60-300.45.
[126] 41 CFR 60-300.41.
[127] See 41 CFR 300.42 (a-b).
[128] See 41 CFR 300.42 (e).

Unlike Section 503, contractors do not have a requirement to invite employees to self-identify under VEVRAA. Also, the VEVRAA regulations do not mandate that contractors use a prescribed form for self-identification purposes. Even though there is not a mandated form, invitations to identify as a protected veteran must contain the following components:

- A statement that the company is a federal contractor required to take affirmative action to employ and advance in employment protected veterans pursuant to 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; and
- A statement that the information will not be used in a manner inconsistent with VEVRAA.

An acceptable form for the invitation to self-identify is provided in the regulations and contractors may opt to use it.[129]

During an on-site review, COs must request a copy of the invitation used by contractors if it was not provided in the AAP, as well as request a sample of completed self-identification invitations. COs also must review any communication that contractors use to invite self-identification. In examining these documents, COs must determine whether the contractor's invitation to self-identify is completely voluntary, and whether the contractor is following the required process to invite applicants to self-identify at the pre-offer and post-offer phases of the hiring process.

Depending on the scope of the on-site review, COs may examine the application or personnel file, or both, of each individual in the sample of completed self-identification invitations. For disabled veterans, this examination would include ensuring that the self-identification information is kept separately from personnel and medical files. COs may also review employment data indicating whether the contractor hired these individuals and, if not, the reason for nonselection. COs will also examine whether the individual requested a reasonable accommodation for application or employment as a disabled veteran and, if so, review the appropriate accommodation records to determine whether the contractor handled the accommodation request appropriately. If the contractor denied an accommodation request, COs must determine whether the denial was proper and whether, if needed, the contractor provided a suitable alternative accommodation without undue delay. If any concerns are identified, COs will also interview the affected applicants, employees and others, as appropriate.

VEVRAA has the same restrictions on disability-related inquiries and medical examinations as Section 503 explained earlier in FCCM Chapter 2H03.

[129] See Appendix B to Part 60-300 – Sample Invitation to Self-Identify.

2J RELIGION AND NATIONAL ORIGIN REQUIREMENTS

COs must include assessment of the contractor's compliance with the *Guidelines on Discrimination Because of Religion or National Origin* as a part of the on-site review.[130] Although the Executive Order AAP does not require that the contractor include a reference to these guidelines, the contractor must still comply with them. COs must examine the contractor's policy statement to ensure that it references the contractor's obligation to provide EEO without regard to religion and national origin. COs must also interview contractor officials and employees regarding implementation of the policy, including the provision of accommodation for religious observances and practices. COs include this information obtained during the on-site review in the SCER in Part C.

2J00 CONTRACTOR POLICY AND IMPLEMENTATION

A contractor must review its employment practices to determine whether individuals receive fair consideration for job opportunities without regard to religion or national origin. COs must ask the contractor whether it conducted a review of its employment practices for this purpose and, if so, when, how and whether it documented the review. If the contractor undertook a review, the CO must verify the results and the sufficiency of any corrective actions that the contractor implemented. In making this assessment, the CO will keep in mind that the scope of the contractor's efforts depends on a review of all circumstances, including the nature and extent of any problem areas, as well as the size and resources of the contractor. COs must take into consideration that contractors are not required to collect data on applicants' and employees' religious affiliation or national origin. Therefore, a contractor's self-analysis will not use employment records to identify employees' religious affiliations or national origins. If the contractor did not conduct a review, the contractor must take corrective action.

COs must verify that the contractor communicated the nondiscrimination policy to contractor officials, human resources personnel, employees and applicants, and that procedures implementing the policy are in place. A CO will also verify that the contractor has participated in recruitment and outreach efforts. A CO will review employment policies regarding nondiscrimination based on religion and national origin, and the provision of religious accommodations. During interviews with contractor officials, employees and applicants, a CO will ask about requests for religious accommodations and how the contractor responded to these requests. COs must obtain documentation regarding recruitment and outreach, and other affirmative action efforts.

2J01 RELIGIOUS ACCOMMODATION

The contractor must accommodate the religious observances and practices of its employees and prospective employees unless it can demonstrate that it cannot reasonably accommodate a religious observance or practice without undue hardship on its business.[131] In determining the extent of the contractor's obligation to provide reasonable accommodations on religious grounds, COs must consider:

- Business necessity;

---

[130] 41 CFR Part 60-50.
[131] See 41 CFR 60-50.3.

- Financial costs and expenses; and
- Resulting personnel problems.

The agency follows Title VII legal principles on religious accommodations.[132] COs should note that Title VII standards for religious accommodation are not the same as Section 503 standards for reasonable accommodation. COs must ask the contractor whether and how it has made accommodation to the religious observances and practices of its employees and prospective employees.[133] COs must also ask whether the contractor denied any religious accommodation requests. If so, the CO will seek documentation and verification of the reasons for denial and ensure that they were proper. In reviewing employee files, COs must be alert for any pattern of discipline or terminations based on refusal to work on certain days based on religious observances. If the contractor reports that no requests were made, COs must review procedures available for evaluating such requests.

2J02 POTENTIAL HARASSMENT AND DISCRIMINATION

While conducting interviews and review of records, COs may obtain information regarding potential harassment or discrimination based on religion or national origin, or both. Like harassment based on race, sex, sexual orientation, gender identity, disability, or veteran status, harassment based on religion or national origin may take a number of forms. Examples include name calling, negative treatment, or derogatory speech directed at individuals of a specific religion or national origin. If a CO obtains information about potential harassment or discrimination, the CO must investigate further to determine whether the:

- Discrimination occurred in the past or is ongoing;
- Contractor knew or should have known of the discrimination;
- Contractor has internal discrimination and harassment complaint procedures in place;
- Contractor's internal discrimination and harassment complaint procedures are known to the employees; and
- Contractor has done anything to address the problem.

Additional information regarding harassment and hostile environment on the bases of race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status is discussed in Chapter 6, Complaint Investigation.

Additionally, if the CO finds indicators of disparate treatment or disparate impact,[134] or both, the CO must fully investigate the issue. The CO must obtain copies of any documents reflecting these concerns or indicating how the contractor dealt with the concern. The CO must also interview people knowledgeable about the matter. If the investigation identifies issues specific to

---

[132] See Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e(j).
[133] See 41 CFR 60-50.3 and *http://www.eeoc.gov/laws/types/religion.cfm* (last accessed September 2019).
[134] Definitions for these terms are included in the Key Words and Phrases section of the Manual.

religious or national origin discrimination that the *Guidelines on Discrimination Because of Religion or National Origin* do not address, the CO must follow Title VII principles in determining whether a violation may have occurred.

2J03 COMMUNITY CONTACTS

As part of the on-site review, COs may identify organizations representing the interests of various nationalities and religious groups located in the labor area serving the contractor's facility. COs may find it useful to contact such groups for information about possible employment problems experienced by their members who have applied for employment with the contractor.

2K COMPLIANCE WITH SEX DISCRIMINATION REGULATIONS

It is unlawful for a contractor to discriminate against any employee or applicant for employment because of sex.[135] The term sex includes, but is not limited to, pregnancy, childbirth, or related medical conditions; gender identity;[136] transgender status; and sex stereotyping.[137] In general, the contractor may not make any distinction based on sex in recruitment, hiring, firing, promotion, compensation, hours, job assignments, training, benefits or other terms, conditions or privileges of employment.[138]

Discrimination on the basis of sex may occur, for example, when the contractor makes a distinction between married and unmarried persons that is not applied equally to men and women, or denies women with children an employment opportunity that is available to men with children. Other examples[139] of unlawful disparate treatment include:

- Steering women into lower-paying or less desirable jobs on the basis of sex;
- Maintaining seniority lines on the basis of sex; or
- Distinguishing on the basis of sex in apprenticeship or other formal or informal training programs.

Employment policies or practices that have an adverse impact on the basis of sex, and are not job-related and consistent with business necessity, also violate Executive Order 11246. Some policies or practices that exemplify such unlawful disparate impact on the basis of sex include:[140]

- Relying on recruitment or promotion methods, such as "word-of-mouth" recruitment or "tap-on-the-shoulder" promotion, that have an adverse impact on women where the contractor cannot establish that they are job-related and consistent with business necessity; or

---

[135] See 41 CFR Part 60-20.
[136] Gender identity is also covered as an independent protected category by EO 11246.
[137] 41 CFR 60-20.2(a).
[138] 41 CFR 60-20.2(b). The exception is where sex is a bona fide occupational qualification reasonably necessary to the normal operation of a contractor's particular business or enterprise. See Section 2K01.
[139] For a longer list of examples of unlawful sex-based disparate treatment, see 41 CFR 60-20.2(b).
[140] 41 CFR 60-20.2(c).

- Height and/or weight restrictions that are not necessary to the performance of the job and that negatively impact women substantially more than men.

2K00 DISCRIMINATION ON THE BASIS OF PREGNANCY

COs are also reminded that discrimination on the basis of pregnancy, childbirth, or related medical condition, including childbearing capacity, is a form of unlawful sex discrimination.[141] A few examples of unlawful pregnancy discrimination are:

- Refusing to hire pregnant women or women of childbearing capacity, or subjecting these women to adverse employment treatment because of their pregnancy or their capacity to bear children;

- Firing female employees or requiring them to go on leave because they become pregnant or have a child;

- Limiting pregnant women's job duties based solely on the fact that they are pregnant, or requiring a doctor's note in order for a pregnant woman to continue working;

- Providing employees with health insurance that does not cover hospitalization and other medical costs for pregnancy, childbirth, and related medical conditions to the same extent that hospitalization and other medical costs are covered for other medical conditions; and

- Denying alternative job assignments, modified duties, or other accommodations to an employee who is temporarily unable to perform some of her job duties because of pregnancy, childbirth, or related medical conditions when:

    - Such assignments, modifications, or other accommodations are provided to other employees whose abilities or inabilities to perform some of their job duties are similarly affected;

    - The denial of the accommodations imposes a significant burden on employees affected by pregnancy, childbirth or related medical conditions; and

    - The contractor's asserted reason for denying accommodations to the worker does not justify that burden.

2K01 REVIEW OF CONTRACTOR POLICIES AND IMPLEMENTATION

When conducting an on-site review, COs must request copies of the contractor's policies covered by 41 CFR Part 60-20 and examine whether the contractor implemented its employment activities and decisions in a manner consistent with Part 60-20. COs must interview contractor officials and employees regarding the implementation of the contractor's policies, and investigate for any evidence of sexual harassment or other types of discrimination based on sex. The CO must include information obtained during the on-site review in the SCER in Part C.

---

[141] 41 CFR 60-20.5.

The discussion below addresses six of the areas for which COs must review the contractor's policies: conditions of employment, distinctions based on sex stereotypes (*e.g.,* caregiving responsibilities), bona fide occupational qualifications (BFOQs), employment exclusions, compensation discrimination and employment advertising.

a. Conditions of Employment. COs must examine whether contractor policies make prohibited distinctions in conditions of employment based on sex, including on the basis of pregnancy, childbirth or related medical conditions, or on the basis of sex-based stereotypes. Examples of such unlawful disparate treatment include steering women into less desirable jobs on the basis of sex and maintaining seniority lists on the basis of sex. Contractors also must not make employment decisions based on stereotypes about how males and females are "supposed" to look, speak or act. Such employment decisions are a form of sex discrimination prohibited by Executive Order 11246, as amended. For example, a contractor must not deny opportunities to women with children based on the sex-stereotyped belief that women with children should not or will not work long hours. In addition, COs must examine whether the contractor's facially neutral policies and practices have an adverse impact on the basis of sex and, if they do, whether they are job-related and consistent with business necessity. For example, it is unlawful sex discrimination to impose height or weight qualifications that are not necessary to the performance of the job and that negatively impact women substantially more than men.

COs must also examine written policies and conduct interviews with contractor staff and employees regarding the implementation of policies and practices to identify whether distinctions between married and unmarried people apply equally to both sexes, including distinctions between single parents and married parents based on sex. Even if the policies are facially neutral, COs must examine whether such policies have an adverse impact on the basis of sex and, if they do, whether those policies are job-related and consistent with business necessity.

b. Distinctions Based on Sex-Based Stereotyping.[142] As noted above, differential treatment for an employment-related purpose based on sex-based stereotypes is a violation of Executive Order 11246. COs must assess contractor policies and practices to ensure that sex-based stereotypes are not written into the policies. For example, it is prohibited to deny fathers access to family-friendly policies like workplace flexibility that employers provide to mothers, based on stereotypes about fathers' roles in caregiving. Similarly, it is prohibited to deny opportunities to mothers based on the sex-stereotyped belief that women with children should not or will not work long hours.

c. BFOQs. Contractors may not hire or employ individuals on the basis of sex unless sex is a BFOQ reasonably necessary to the normal operation of the contractor's particular business or enterprise.[143] As a part of most on-site reviews, COs examine job qualifications as stated by the contractor. Under Title VII, sex has been found to be a BFOQ in extremely rare instances. Among them are:

- *Authenticity.* Jobs involving a need for authenticity or genuineness, such as actors or models.

[142] 41 CFR 60-20.7.
[143] 41 CFR 60-20.3.

- *Personal Privacy.* Jobs where the performance of essential job elements would entail substantial invasion of personal privacy (*e.g.,* a permanent restroom attendant). This is limited to situations where the normal operation of the contractor's business depends on the employee being the same sex as its employees or customers and there is no other way to ensure privacy. This is different from customer preference. For example, a contractor cannot refuse to hire female salespeople in the belief that male customers will not accept them.

d. Employment Exclusions.

- *Hazardous Jobs.* Contractors may not exclude women from jobs they may believe are dangerous or unsuitable for women to perform unless sex is a BFOQ.

- *Reproductive Hazards.* OFCCP follows Title VII principles when determining whether a policy excluding women from a job because of a concern about reproductive hazards is discriminatory. If a question relating to reproductive hazards arises during a compliance evaluation, COs must discuss the issue with their supervisors.

e. Compensation Discrimination. COs must examine possible compensation discrimination issues. Compensation discrimination encompasses discrimination regarding 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. Contractors may not make distinctions in compensation or access to earnings opportunities or better paying job opportunities based on sex. Contractors also may not implement compensation practices that have an adverse impact on the basis of sex and are not shown to be job-related and consistent with business necessity. Whether because of the desk audit analysis of compensation data or a focused review of compensation practices, if COs identify areas for investigation, they must gather additional information and conduct interviews regarding the contractor's compensation policies and practices. Section 2E03 has additional information on compensation.

f. Employment Advertising. COs must examine the contractor's advertisements in newspapers, online and in other media. The advertisements must not recruit or advertise for individuals for certain jobs on the basis of sex. Use of sex-specific terms for jobs (such as "linemen") is suspect but is not automatically a violation of Executive Order 11246. Where sex-specific language is used in conjunction with prominent language that clearly indicates the contractor's intent to invite applications without regard to applicants' sex, COs should not find a violation.

2K02 LEAVE AND FRINGE BENEFITS

During the on-site review, COs gather information and conduct interviews to determine whether the contractor discriminates on the basis of sex in the provision of leave and fringe benefits in violation of OFCCP's regulations at 41 CFR Part 60-20. COs should also be familiar with the FMLA, discussed below, as well as understand how the application of policies or the absence of policies may result in discrimination and harassment.

a. *FMLA*. The FMLA was enacted in 1993.[144] In part, the purpose of FMLA is to address the needs of families and caregivers as affected by the demands of the workplace, specifically addressing leave issues. OFCCP and the Department's WHD, which enforces FMLA, entered into an MOU.[145] Under this MOU, OFCCP incorporates an FMLA inspection into its compliance evaluation and complaint investigation procedures, as discussed below.

b. *Family Leave and Pregnancy and Disability Leave.* The CO will examine the contractor's policy regarding leave in light of the prohibition of discrimination based on sex, including pregnancy and FMLA.

- *Family Leave Required under the FMLA.* During the course of a routine compliance evaluation or complaint investigation, the CO will determine whether the FMLA notice is posted and whether written guidance about the provisions of FMLA is provided in accordance with 29 CFR 825.300. Incidents of suspected noncompliance with these provisions are referred to WHD. In addition, the CO may examine the application or use of these policies by the contractor for any adverse treatment of, or adverse impact on, any specific group protected by OFCCP's legal authorities. This is distinct from enforcing violations of family leave requirements.

  The FMLA requires employers of 50 or more employees to provide up to 12 weeks of unpaid, job-protected leave for qualified workers for a worker's pregnancy or own serious health condition, or when a worker becomes a new parent. Covered employers are also required to provide FMLA leave to employees caring for a covered family member with a serious health condition (*e.g.,* a mother caring for a child with cancer). Additionally, various states have their own family and medical leave laws that may provide additional leave or additional coverage.

- *Pregnancy Disability Leave.* The CO must examine whether the contractor has a sick leave or disability leave policy (written or unwritten), and leave for conditions associated with childbirth.[146] The CO must also examine whether the contractor's leave policy, or lack thereof, has an adverse impact on employees of one sex and is not justified by business necessity. These requirements apply regardless of whether the contractor is a covered contractor under the FMLA or whether the employee qualifies for FMLA leave.

c. *Fringe Benefits.* OFCCP's regulations state that it is unlawful for a contractor to discriminate on the basis of sex with regard to fringe benefits. The term "fringe benefits" is defined in 41 CFR 60-20.6 as including medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions and privileges of employment. The greater cost of providing a fringe benefit to members of one sex is not a defense to a contractor's failure to provide benefits equally to members of both sexes. COs must, therefore, obtain information to determine whether a contractor is providing equal employee benefits for men and women, regardless of cost.

---

[144] Family and Medical Leave Act, Pub. L. 103-3 (29 U.S.C. chapter 28).
[145] The MOU between OFCCP and WHD was signed in September 1993.
[146] "Leave" as used here includes but is not limited to eligibility for leave, duration of leave, accrual of seniority and reinstatement rights.

2K03 SEXUAL HARASSMENT

Sexual harassment, as well as harassment based on race, color, religion, sexual orientation, gender identity or national origin, is a violation of the nondiscrimination provisions of Executive Order 11246. During the on-site review, COs must be alert for any indications of sexual harassment.[147] OFCCP follows Title VII principles when determining whether sexual harassment has occurred. Unwelcome sexual advances, requests for sexual favors, offensive remarks about a person's sex, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.[148]

2L EQUAL OPPORTUNITY CLAUSES AND OTHER REQUIREMENTS

Contractors have an obligation to meet certain requirements in the equal opportunity contract clauses pertinent to each OFCCP-enforced law, such as notices and postings requirements. Some of these requirements are extremely important and crucial to ensuring that contractors meet EEO obligations and that failure to meet these obligations does not result in discrimination. Additionally, the contractor may have posting and other requirements under Executive Order 13496.

While COs may have adequately confirmed some of these requirements during the desk audit, they verify all the requirements during the on-site review. COs can provide compliance assistance to the contractor at any time during the review process in order to expedite resolution of identified problems. However, the contractor's failure to comply with an equal opportunity clause or other regulatory requirement constitutes a violation.

If the contractor asserts that it has fully corrected all identified problems, COs must seek to confirm this assertion. For example, if a required posting under Executive Order 11246 or Executive Order 13496 was missing and the contractor agreed to correct this problem, the CO must conduct a visual inspection to determine that the required posting is now present. The CO must include any other outstanding technical violations in the NOV.[149]

---

[147] See 41 CFR 60-20.8.

[148] 41 CFR 60-20.8(a). Harassment based on sex also includes harassment based on pregnancy, childbirth or related medical conditions; and harassment that is not sexual in nature but that is because of sex or sex-based stereotypes. 41 CFR 60-20.8(b).

[149] See Chapter 8 – Resolution of Noncompliance.

2L00 EQUAL OPPORTUNITY CLAUSES AND OTHER REQUIREMENTS OF EXECUTIVE ORDER 11246, VEVRAA AND SECTION 503

In addition to requiring that covered contractors not discriminate against, and take affirmative action on behalf of, covered group members, the laws enforced by OFCCP contain a number of other requirements that COs must verify the contractor has met. COs must inspect the appropriate contractor records and obtain copies of them, as needed. COs must record their observations and whether the requirements were met in the SCER in Part C.

a. Requirements Applicable to Executive Order 11246, Section 503 and VEVRAA.

- Contractors must advise subcontractors, including vendors who are subcontractors, of their obligation to comply with nondiscrimination obligations and develop an AAP if they meet coverage thresholds by including the equal opportunity clause in all covered contracts and subcontracts (including purchase orders). The clause may be included by reference under Executive Order 11246. Under Section 503 and VEVRAA, the clause shall be made a part of the contract by citation to 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a), respectively, and inclusion of specific language, in bold text, after the citations.[150] Contractors may combine all of their required equal opportunity clauses into a single "incorporation by reference" clause, provided that the entire combined clause is set in bold text and the prescribed content of the veteran and disability equal opportunity "incorporation by reference" clauses is preserved. The following example provides one illustration of how this might be done for a supply and service contractor:

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

  In the absence of the clause in covered documents, it is applicable by operation of law. COs must question contractor officials as to how and when such notification occurs, and must review a sampling of subcontracts to determine whether they include the required clause.

- Contractors must post notice of their EEO and affirmative action obligations in conspicuous places, available and accessible to both employees and applicants for employment whether by physical or electronic posting. "EEO is the Law" posters (and required supplements) should be in break rooms, common areas for employees and areas frequented by applicants for employment. COs must conduct a visual inspection to confirm the required posting. Until the "EEO is the Law Poster" is updated to reflect all of OFCCP's protected bases, COs must

[150] See 41 CFR 60-300.5(d) and 41 CFR 741.5(d) for the specific required language under the implementing regulations for VEVRAA and Section 503.

inspect the contractor's premises to ensure the "EEO is the Law" poster supplement is also displayed. The most current versions of the "EEO is the Law" poster and supplement are available at http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm (last checked September 9, 2019).

- Contractors must inform any labor unions or worker representative organizations with which they have a collective bargaining agreement or other agreement of the contractor's EEO and affirmative action commitments under the regulations. COs must obtain documentation that indicates the contractor provided this notice and will confirm receipt of notice with union representatives.

- Advertisements and solicitations for employment must state that the contractor will consider all qualified applicants, regardless of the protected bases. For contractors only covered by Executive Order 11246, it is acceptable to use the phrase "Equal Opportunity Employer" or list out all the bases. However, for those covered by Section 503 or VEVRAA, the tagline should at a minimum state "disability" and "vet." For example, a contractor could satisfy all three laws by stating in job solicitations that "all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran." It could also use the abbreviation "Equal Opportunity Employer – vets, disability" on its job advertisement taglines. COs will review a sample of such advertisements and solicitations during the on-site review.

- Contractors must develop and maintain an AAP for each establishment, making them available for inspection as required by the regulations. COs must confirm that the contractor is meeting this obligation.

b. *Requirements Applicable Only to Executive Order 11246.*

- Contractors must notify subcontractors, including vendors who are subcontractors, of their obligation to file an EEO-1 Report annually. COs must confirm that the contractor met this obligation.

- Contractors must disseminate the Pay Transparency Nondiscrimination Provision to employees and applicants for employment. COs must review the contractor's employee manual or handbook to determine whether the Pay Transparency Nondiscrimination Provision is included.[151] COs must also determine whether the contractor has disseminated the provision either by electronic posting or by posting hard copies of the provision in conspicuous places available to employees and applicants.[152] This provision provides applicants and employees notice that the employer will not discriminate against them for inquiring about, discussing or disclosing their pay or, in certain circumstances, the pay of their co-workers. Because OFCCP believes that uniform use of the nondiscrimination provision is necessary to ensure consistency and clarity in the information provided to applicants and employees, contractors must, at a minimum, use the language provided in the

[151] See 41 CFR 60-1.35(c)(1).
[152] See 41 CFR 60-1.35(c)(2).

provision at https://www.dol.gov/ofccp/PayTransparencyNondiscrimination.html to satisfy both dissemination requirements. Nothing limits a contractor from providing additional information to their employees about their rights and obligations.

c. *Requirements Applicable Only to VEVRAA.*

- *VETS-4212 Report.* The contractor is required to submit a VETS-4212 Report to the DOL's VETS annually. The report includes the numbers of protected veterans in the contractor's workforce by job category and hiring location. Contractors must also collect data indicating the total number of employees and covered veterans hired during the reporting period. COs must confirm that the contractor has filed the VETS-4212 Report for the evaluation period.[153] If the contractor did not file the VETS 4212 Report, COs will indicate in the CMS that it wasn't filed. Though OFCCP does not cite contractors for failure to file a VETS-4212 Report, OFCCP reports nonfilers to VETS.

- *Mandatory Job Listing*. When a company becomes a federal contractor subject to VEVRAA, it must advise the ESDS in each state where the company has establishments that the company is a federal contractor and that it desires priority referrals of protected veterans for job openings within the state.[154] Contractors must also include the contact information for the job listings that they send to the ESDS.[155] The contractor must also immediately list all employment openings which exist at the time of the execution of the federal contract with the appropriate ESDS where the opening exists, and provide the name and location of each hiring location and the contact information for the contractor official responsible for hiring at each location.[156] In providing the listing of employment openings, contractors must provide the listing information in a manner and format permitted by the delivery system, so that it can access and use the information to make the job listings available to job seekers. The form and format used by employment service delivery systems can vary from state to state. However, using the appropriate form and format helps increase the likelihood that the job listing will actually be posted by the ESDS. Doing so also allows the services to provide priority referral of veterans protected by VEVRAA. CO must remember that job "listing" is the act of delivering information about job openings to the state workforce agency or local ESDS. Job "posting" is the act of a state workforce agency or ESDS making the job listing visible or public for jobseekers to access and use.

  In addition to that initial notification, contractors must list employment openings with the appropriate ESDS when openings occur throughout the performance of the contract. This can be accomplished by listing openings directly with the state workforce agency job bank or with the local ESDS where the opening occurs. Also, some contractors may provide their listing information to a privately-run job service or exchange which, in turn, provides the

---

[153] COs and others, as appropriate, may access the VETS-4212 database to verify whether the contractor submitted the report, as well as request copies of the submitted forms from the contractor.

[154] 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.

[155] See 41 CFR 60-300.5(a)4.

[156] Immediately listing of employment openings with the appropriate ESDS means listing the job *at least* concurrently with the use of any other recruitment sources or effort. See 41 CFR 60-300.5(a)3.

listing information to the appropriate ESDS. These private arrangements also satisfy the contractor's listing requirement as long as the privately-run service provides the information to the delivery system in a manner and format that allows the delivery system to provide priority referral of protected veterans. These privately-run services can typically provide COs with reports of job listings on behalf of their client contractors. These reports can go by different names, depending on which the privately-run service provider was used by the contractor.[157] Nonetheless, ensuring that the required job listing documentation is maintained is ultimately the responsibility of each contractor.

Contractors must list all employment openings except for executive and senior management positions, positions that will be filled internally, and jobs lasting three days or less. If possible, COs will contact the ESDS used by the contractor in advance of the on-site review and request confirmation that the contractor has listed its employment openings with that office. COs must obtain from the delivery system a listing of the job orders the contractor placed, by job title and date. COs must then compare this list with the list of jobs the contractor has filled through new hires, identify any jobs not listed with the employment office and determine whether they should have been listed.[158]

2L01 EXECUTIVE ORDER 13496 REQUIREMENTS

Pursuant to Executive Order 13496 and its implementing regulations, 29 CFR Part 471, federal contractors and subcontractors must notify employees about their rights under the NLRA. Contractors with covered contracts must meet their obligations under Executive Order 13496.[159]

Executive Order 13496 requires that covered contractors post notices specifying employee rights under the NLRA. The NLRA guarantees employees the right to organize and bargain collectively with their employer, and to be free from retaliation for so doing. Contractors must post the notice conspicuously in and around their establishments, work sites, and offices so that it is prominent and employees who are covered by the NLRA and directly or indirectly (*e.g.,* maintenance, repair, personnel, payroll work) engaged in contract-related activity can readily see it. COs must inspect employee bulletin boards and areas frequented by applicants and employees, such as break rooms, personnel offices and common areas, for the required poster. If the contractor customarily posts employee notices regarding the terms and conditions of employment electronically, then the contractor must also post the Executive Order 13496 notice electronically. COs must verify the contractor's compliance.

---

[157] Two common job listing reports COs may encounter are the "VetCentral Job Order Ad Hoc Compliance Report" and the "NLx Return Receipt Report." There are, however, other types of reports. OFCCP does not make endorsements or recommendations concerning privately-run job service providers.

[158] The ETA and OFCCP jointly issued the Training and Employment Notice (TEN) directing State Workforce Administrators, State and Local Workforce Agencies and State Workforce Liaisons that they must provide the listings to OFCCP at no cost. (TEN 15-14). A copy of TEN 15-14 is available at *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3490*. A Sample letter the CO can use to request the listings is included as Letter L-3.

[159] See OFCCP Directive 2010-01, "Verification Procedures under E.O. 13496, Notification of Employee Rights under Federal Labor Laws, and the Department of Labor's Implementing Regulations at 29 C.F.R. Part 471."

Executive Order 13496 also requires that covered contractors ensure that each subcontract and purchase order related to their federal contract(s) contains a notice of this posting obligation. COs must review a sampling of subcontracts and purchase orders to ensure that a covered contractor complies with this requirement.

There are exceptions to the posting requirements so COs must consult with the RSOL, their supervisors or the national office if there are questions about coverage under Executive Order 13496.[160] If a violation of Executive Order 13496 is not corrected, the Director of OFCCP, or a designee, refers the matter to the Director of Office of Labor-Management Standards (OLMS), who may take enforcement action under 29 CFR 471.13, as appropriate.

2L02 RECORDKEEPING

COs must verify that the contractor has complied with all regulatory requirements regarding personnel records.[161] If the contractor's recordkeeping is not in conformance with 41 CFR 60-1.12, 41 CFR Part 60-3, 41 CFR 60-300.80, or 41 CFR 60-741.80, the CO must record the recordkeeping violations in the SCER in Part C. Failure to preserve complete and accurate records as required by these regulations constitutes noncompliance with the contractor's obligations. If the contractor has destroyed or failed to preserve records, the CO may presume that the information would have been unfavorable to the contractor. Additionally, if a contractor's case file has multiple citations for recordkeeping violations and there is evidence of a recurrence, the CO will treat it as a repeat violation.[162]

2M EMPLOYMENT ACTIVITY DATA REQUIREMENTS

The CO's objective as a neutral fact finder is to gather data and information during the investigation to determine whether there are violations of the laws OFCCP enforces and, if so, what caused them. Once gathered, the CO must analyze the information. The CO will do this using any or all of a variety of methods, as appropriate. While the CO may choose to perform some analysis during the on-site review, much of the analysis will likely be performed off-site.

If the employment activity analyses conducted by the CO during the desk audit[163] indicate potential discrimination, there is a need for further analyses and investigation. Based upon any additional data obtained during the desk audit or the on-site review, the CO may refine the employment activity analyses. If the analyses indicate evidence of disparate treatment or adverse impact, or both, resulting from the employment process, personnel activity or application of selection criteria, the CO must determine whether the problem constitutes unlawful discrimination. The CO does this by examining all of the relevant information gathered during the compliance evaluation (*e.g.,* employment data, the CO's observations, anecdotal evidence obtained during interviews) and

---

[160] See Executive Order 13496 Frequently Asked Questions, *http://www.dol.gov/ofccp/regs/compliance/EO13496_faqs.htm* (last accessed Sept. 10, 2019).
[161] See Chapter 1C02 – Regulatory Citations for Recordkeeping.
[162] FCCM Chapter 8 – Resolution of Noncompliance.
[163] FCCM 1O – Analysis of EO 11246 AAP.

applying the appropriate discrimination proof model to the facts of the case. The CO will record on-site investigative findings related to potential discrimination in Part C of the SCER.

2M00 ANALYZING THE SELECTION PROCESS

a. *Identifying and Mapping the Employment Process*. The CO must determine how the contractor's selection process for the job or opportunity under examination works, including identifying all of the steps and decision points involved. The employment process usually consists of decisions and actions an employee or applicant must take such as applying for the job, as well as qualification points such as passing a test or interview in order to move to the next stage of the process. Once the CO identifies the employer's process, he or she may find it helpful to "map" or create a diagram representing the process and the points or steps in the process where the contractor can eliminate an employee or applicant from further consideration. In addition to mapping the process, the CO will need to gather information to understand when the process was instituted, why, by whom, whether there have been changes in the process and, if so, when and why.

b. *Identifying Pass/Fail Points*. If an individual must successfully navigate a certain step(s) in the process before proceeding on to the next, that step(s) is a "pass/fail point." Ideally, the CO can examine each pass/fail point to see if the contractor is disproportionately screening out members of any specific group. However, if the contractor does not eliminate individuals at separate steps throughout the process, but instead weighs their performance at each step to formulate a final decision, then the CO evaluates the process as a whole. To do this, the CO must ask the contractor to explain the importance and weight of each step in the selection decision. If an analysis of the entire selection process shows that the contractor disproportionately screens out members of a specific group, the CO must attempt to determine the particular criteria that are the source of the problem.

c. *Lack of Data*. If the contractor failed to maintain adequate data as required by 41 CFR Part 60-3, the CO must cite the contractor for this violation. If the contractor's lack of data hinders the CO's ability to determine the step or criterion that disproportionately eliminated members of the nonfavored group, then the CO must conduct the analysis based upon the "bottom line effect" or the existence of an adverse impact due to the total selection process. However, under such circumstances, the CO must obtain as much information as possible about the process and make every effort to identify the step or criterion causing the problem. Below is a very basic example of the concept.

> *Example*. A selection process consists of: 1) completing an application; 2) having a high school diploma; 3) taking a written test; and 4) participating in an interview during which the contractor accepts or rejects the applicant. In this example, applicants must demonstrate they have a high school diploma before taking the test, and must pass the test before participating in an interview. For each applicant, the CO must determine the applicant's race, ethnicity and sex, whether the applicant had a high school diploma, the test results, and the results of the interview including the interviewer's notes, if any. This information is used when determining the number of members within each group eliminated at each step of the process. The CO must conduct an adverse impact analysis at each stage of the selection process to determine whether adverse impact occurs.

If the contractor's application process, or any part of the process, involves Internet applicants, the CO must obtain applicant data and information regarding the basic criteria used in determining applicants for the job.[164] The CO must discuss with his or her supervisor the appropriate analyses for Internet applicants.

d. *Relevant Pools*. The relevant pool for each step of the contractor's selection process includes the individuals who made it *to that step* in the selection process compared with those who made it *through to the next step*. In the example in (c), above, if the CO is analyzing disparity in hiring rates, he or she would first consider the pool of all applicants to determine whether the high school diploma requirement is the source of the adverse impact. If the high school diploma requirement does not fully explain the disparity in hiring, the CO would next determine whether the test disproportionately eliminated members of the nonfavored group. Finally, the relevant pool for evaluating the effect of the interview would be all applicants who have a high school diploma and passed the test. Therefore, any difference in their selection rates would be attributable to the interview.

2M01 DISTINGUISHING OBJECTIVE FROM SUBJECTIVE SELECTION CRITERIA

The contractor's selection criteria fall into two broad categories: "objective criteria" and "subjective criteria."

a. *Objective Criteria*. The central characteristic of an objective criterion is that it can be independently verified. With objective criteria, different people measuring the criteria will reach the same results because they are clearly defined or quantifiable in nature. For example, whether or not the individual earned a certain diploma or degree is an independently verifiable fact.

b. *Subjective Criteria*. Subjective criteria require judgment in their application. Therefore, people can differ in opinion on whether a particular candidate possesses and meets such a criterion. For example, two selecting officials may easily have differing opinions on whether a candidate "has good leadership skills." In this example, if disparities exist in the application of the subjective criteria between groups, the CO would gather information to determine if the contractor applied the subjective criteria based on bias or stereotypes. An example of this might be a statement made by hiring official that men commonly display leadership qualities that women do not.

In most cases, the CO will first analyze a contractor's use of objective criteria and the resulting impact, followed by an analysis of the contractor's use of subjective criteria and the resulting impact. Decisions based on subjective criteria involve the use of "judgment calls" by the contractor. Clearly, it can be difficult to assess whether subjective criteria are applied equally to all similarly situated applicants or candidates, or whether the application of subjective criteria is tainted by bias or stereotyping. Generally, when the CO cannot attribute an adverse impact to objective criteria, it is likely attributable to the use of subjective criteria. This situation is most likely where the CO finds that the reasons for the decision are undocumented or the contractor characterizes the decision in a subjective manner like saying that the applicant was "a good fit."

[164] See FCCM 1F05– Review of Executive Order Itemized Listing Data for Acceptability.

In some instances, the CO will find that the contractor used multiple criteria when making the hiring decision. When this occurs, the CO must determine if the person selected was required to meet each criterion individually or whether the contractor balanced the criteria (*e.g.,* assigns weight to each criterion) in reaching a decision. If meeting each criterion was a requirement, the CO must perform the appropriate analysis for each one. If the criteria are weighted, the CO must establish how they were weighted in order to determine how to conduct an analysis.

For example, a contractor gives each criterion a specific weight but one criterion is not met by a candidate. The contractor, however, selects that candidate. The CO must analyze each criterion independently to, among other things, determine the relevance of each criterion in the selection process. If, however, a contractor gives each criterion a score, and it is the cumulative score that determines whether a candidate is selected, the CO would analyze the cumulative criteria. The contractor may also refer to criteria as "minimum" or "preferred." Minimum qualifications are usually treated as "pass/fail" whereas preferred qualifications are those that the contractor may prefer but are not necessarily required. The CO must determine whether, and how, the contractor is using this criterion in making employment decisions.

2M02 ANALYSIS OF OBJECTIVE CRITERIA

The first step in analyzing the contractor's use of objective selection criteria is to verify that the criteria were actually used to make selections, and that they were applied uniformly to all members of the favored and nonfavored groups. COs only need to consider the contractor's stated legitimate objective criteria.

a. *Single Criterion*. To examine the application of the criterion, the CO must determine whether the same criterion was applied to each individual and that data reflecting the application of the criterion are available for all individuals in the relevant pool.

b. *Multiple Criteria*. When there are multiple criteria, or there is no summary record available to determine whether the people selected met the criteria, the CO will need to create a summary record. The CO can do this by creating a spreadsheet or a database that contains all relevant data for each individual applicant or candidate, or both. Based on the example in subsection 2M01(a) above, the spreadsheet data for each applicant would include race, ethnicity, sex, high school diploma or no diploma, test result and interview result. The spreadsheet will allow the CO to analyze the data more readily and determine whether the multiple criteria were applied uniformly to each applicant and the result of their application (*e.g.,* the applicant or candidate was either selected or not selected).

c. *Interpreting the Results of Criteria Verification.*

- When the review of individuals selected is complete, the CO must review the spreadsheet data to see if each selectee actually met the criteria. The CO may conclude that the contractor used the criteria if everyone selected met the criteria.

- If a substantial number of individuals selected do not meet a particular criterion, the CO may discount the contractor's statement that the criterion was the basis for the decision.

- If the contractor used the criterion in a nonuniform manner, the CO must determine whether the contractor applied the criterion differently to members of the favored group when compared to the nonfavored group. This comparison will reveal any disparate treatment.

- If the contractor applied the criterion uniformly to members of the nonfavored group and favored group, then the CO must analyze the effect of the application of the criterion for adverse impact.

2M03 ANALYSIS OF OBJECTIVE CRITERIA FOR ADVERSE IMPACT

a. *Pool of Individuals Used for Statistical Calculation*. In an adverse impact calculation, the CO compares the number of individuals from each group (by race, ethnicity, and sex) who were assessed using the criterion at issue with the number from each group who met the criterion. This yields a "pass rate" or "selection rate" for each group, and the CO then tests the difference in pass rates between the groups for adverse impact.

b. *Performing the Adverse Impact Calculation*. First, the CO must determine whether each objective criterion is a pass/fail requirement, (*i.e.*, it eliminates an individual from further consideration if it is not met), or whether it is considered along with other criteria in making a final decision.

   - For each pass/fail criterion, the CO must determine whether the difference in pass rates for members of each group (by race, ethnicity, and sex) shows adverse impact.

   - When the criteria are not considered singly but are considered together in reaching a decision, the CO must determine how the contractor weighted each criterion to make a selection. Using the weights used by the contractor, the CO must determine whether this is causing the adverse impact. If it is not possible to isolate the contribution of the individual criterion to the bottom line effect, the CO will calculate the cumulative effect of all the criteria. This calculation may be appropriate when the contractor did not keep records of the effects of the individual criteria.

c. *Measurement of Statistical Significance*. Measurement of the statistical significance of a difference in selection rates, whether by standard deviations or another method, indicates the probability that a particular disparity in those rates could or could not have occurred by chance. The greater the disparity between the percentage of a specific group (*e.g.,* women) actually selected and the percentage of the group expected, the more likely the variation did not happen by chance but was a result of the selection factor used to screen. When there is a significant probability that the disparity in selection rates for members of a nonfavored group could not have happened by chance, this is strong evidence of adverse impact.

2M04 ANALYSIS OF SUBJECTIVE CRITERIA AND DETERMINATION OF ADVERSE IMPACT

The CO will generally undertake an analysis of subjective criteria only after first determining the effects of any objective qualifications used by the contractor. Subjective criteria are analyzed in essentially the same way as objective criteria: namely, the CO first makes a determination as to whether the contractor is actually using the stated subjective criteria (verification) and then whether

the contractor is applying them to members of all groups (if not, disparate treatment may have occurred). If the contractor applied subjective criteria to all groups, then use of subjective criteria will be analyzed for adverse impact.

The CO determines this by comparing the selection rates of members of favored and nonfavored groups who met the subjective requirements to determine whether statistically significant differences exist. If the disparity in these selection rates is not significant, then it is highly unlikely that discrimination resulted from the use of the subjective criteria. If the disparity is significant, then adverse impact exists and disparate impact discrimination may have occurred. The adverse impact analysis here is the same as the analysis described in 2M03 for the objective criteria analysis.

2M05 JUSTIFICATION OF SELECTION PROCEDURES WHEN ADVERSE IMPACT IS IDENTIFIED

According to the UGESP, the use of any selection procedure or criterion that has an adverse impact on hiring, promoting or other employment opportunities of members of any race, ethnic group, or sex is discriminatory unless the procedure is shown to be validated or otherwise job-related and consistent with business necessity.[165]

It is the contractor's responsibility to provide validity evidence sufficient to justify each selection procedure or criterion found to have adverse impact. Validation is the demonstration of job-relatedness by showing the relationship between the selection procedure and job performance. If, in conducting the analyses of the contractor's selection procedures, COs find that a selection procedure or criterion had an adverse impact, they must ask the contractor to provide all available information regarding its validation of the criterion in question. The contractor should provide information regarding the following:

- Development of the procedure and criterion, including, if the procedure is a written test, whether the contractor developed it internally or purchased it from a vendor;
- Validity studies it conducted, including the correlation coefficient (criterion and construct validation), or how the selection criterion or test content is linked with job requirements, that is, content validation;[166]
- Job analysis in the case of content validity studies and job information that describes how and why the selection criterion was chosen for criterion-related validity studies;[167] and
- Consideration given to alternative selection criterion, the reason for rejecting the alternatives considered, and any efforts made by the contractor to lessen the adverse impact.[168]

COs must analyze this information, along with the analysis finding adverse impact caused by the use of the selection procedure and any other relevant evidence, in accordance with UGESP. Further

[165] 41 CFR 60-3.3A.
[166] 41 CFR 60-3.5, 3.14 and 3.15.
[167] 41 CFR 60-3.14A; 60-3.14B(2) and (3).
[168] 41 CFR 60-3.3B.

analysis of the selection procedure or criterion at issue, or both, and their validation, will be coordinated between the regional office and the national office.[169]

2N LINKAGE AGREEMENTS

COs are required to make contact with community organizations and recruitment resources as part of their assessment of a contractor's recruitment efforts. This requires that the CO have knowledge of the resources available in the community to provide assistance to contractors in resolving employment deficiencies. OFCCP encourages and facilitates such "linkage" relationships between contractors and community recruitment resources.

2N00 LINKAGE OBJECTIVES

OFCCP's online ERRD may provide sources of potential linkages. The following are OFCCP's objectives with respect to facilitating and encouraging linkages:

- To increase employment opportunities available to minorities, identified racial and ethnic groups, women, individuals with disabilities and protected veterans;
- To enhance the effectiveness of OFCCP's compliance activities by providing contractors with additional recruitment sources;
- To assist federal contractors in meeting their affirmative action hiring and promotion goals; and
- To increase cooperation between private sector employers and community recruitment resources.

2N01 LINKAGE REQUIREMENTS

COs must seek to develop new linkages between community recruitment and referral sources and contractors that have made insufficient recruitment efforts to generate applicants that satisfy their affirmative action objectives. Before a CO urges contractors to use the resources, the CO must identify and contact organizations to affirm that they can be of assistance, and to explain what is expected of both parties.

2N02 IMPLEMENTATION UNDER EXECUTIVE ORDER 11246

When linkage is needed, a CO must take the following actions to establish linkage agreements during the course of the compliance evaluation:

a. Identify those job groups in the contractor's workforce where goals were established and there was employment activity, but the goals were not met.

[169] See OFCCP Directive 2005-01, "Investigative Procedures When a Test(s) is One Cause of Adverse Impact in Hiring"

b. Evaluate the contractor's good faith efforts to identify possible recruitment sources for those underutilized job groups.

c. Contact appropriate linkage resources to obtain specific information on availability of potential applicants and potential trainees for positions in the areas of underutilization. If possible, the CO must arrange a meeting between the resource organization(s) and the contractor.

d. When a resource appears to be a likely source of applicants or trainees, the CO will seek to include the contractor's commitment to utilize the linkage source, along with other actions in a CA, if a CA is used to resolve violations related to outreach and positive recruitment.[170]

e. If a linkage agreement is included in a CA, the CA must require progress reports at least semi-annually. With respect to linkages, these reports should contain:

- Total hire activity by job group, broken out by sex, race, ethnicity, and other relevant covered group status; and
- Total hire activity and number of people referred from each linkage source agreed to in the CA, and any other appropriate source, broken out by sex, race, ethnicity, and other relevant covered group status.

2N03 WHERE LINKAGE AGREEMENTS ARE NOT REQUIRED (EXECUTIVE ORDER 11246 Only)

The establishment of new linkages is not required if a CO finds that the contractor's utilization approximates availability for the given job group. If this is true, utilization does not appear to be a problem. Additionally, if it is determined that a current recruitment and referral source with which there is an existing linkage is no longer able to provide the needed assistance, it may be appropriate to discontinue the existing linkage. The CO will assist the contractor in establishing replacement linkages if they are needed.

2N04 LINKAGE AGREEEMENTS FOR INDIVIDUALS WITH DISABILITIES AND PROTECTED VETERANS

Linkage arrangements involving recruitment or referral sources for individuals with disabilities and protected veterans may be particularly useful when either or both of the following exist:

- A review of employee records, job applications and applicant flow data shows that there are few applicants who are members of these covered groups; or
- The annual assessment of outreach and recruitment for individuals with disabilities and/or protected veterans shows that the contractor's efforts have not been effective.

[170] See FCCM Chapter 8 – Resolution of Noncompliance.

If the contractor needs new linkage relationships, the CO will follow the same steps to establish appropriate linkages for these groups as he or she would when establishing linkages to meet affirmative action goals for other groups.

2N05 CONFIRMATION OF LINKAGE AGREEMENT

At the conclusion of the compliance evaluation, the CO will provide written notices to all of the linkage resources or partners in the agreement with the contractor. A sample of a linkage letter is at Letter L-8 – Sample Linkage Letter. The contractor must be provided a copy of the letter. The CO must document the notifications in the case file.

2O ON-SITE REVIEW SUMMARY OR REPORT WRITING

The CO will use the SCER Part C to record potential discrimination issues that the CO identified and reviewed on-site. The CO will also use the SCER worksheets to specify:

- Whether a particular issue or problem needs analysis as an individual case or a systemic case; and
- Whether the particular issue or problem requires a disparate treatment analysis, a disparate impact analysis, or both.

After concluding the on-site review, the CO must complete any required analyses of the data and other information that was gathered. The CO must investigate problem areas and issues until the case file contains sufficient evidence to establish whether discrimination did or did not occur. The case file should retain all evidence the CO obtained and documents the CO created, including any evidence that does not support the CO's conclusions.

2O00 SUMMARY OF FINDINGS

After completing the compliance evaluation, including all on-site and off-site analyses of the information obtained during the on-site review and recorded in the SCER Part C, the CO must compile a summary of findings to include in the Case Summary and Recommendations section of the SCER. This summary includes the findings of the case, the bases for the findings, and the CO's recommendations. The summary of findings should also include the:

- Name and description of the facility;
- Problem area(s) identified, if applicable;
- Description of the selection or other process or practice examined (*e.g.,* for a hiring case, the steps in the application process);
- Results of any analyses conducted such as IRAs, comparative (cohort) analysis, and regression analysis;
- Summary of any interviews conducted;

- Relevant anecdotal evidence obtained;
- Description of any violations and their bases;
- Recommended corrective actions, where the CO has identified violations; and
- Recommended next steps.

The summary should logically lead to the CO's conclusion about whether or not a violation occurred. The CO submits the completed SCER to his or her supervisor for approval.

Depending upon the circumstances of a particular case, it may be a good practice to conduct a follow-up meeting or teleconference with the contractor. Below is an example of why this is a good practice.

- The CO held an exit conference with the contractor at the conclusion of the on-site review. However, following off-site analysis, the CO found additional issues that need to be discussed with the contractor. More specifically, at the conclusion of the on-site, the CO told the contractor that it would be cited for failing to track the race, ethnicity, and sex of job applicants passing through various phases of the selection process. However, during off-site analysis, it became clear to the CO that the contractor also discriminated in its termination activity.

After advising the contractor of its compliance evaluation findings, the CO must provide formal notification through a PDN when there are preliminary indicators of discrimination. COs use certified mail, return receipt requested, to provide this notice to the contractor. If requested by the contractor, a courtesy copy is sent by email or facsimile. We discuss the various forms of notice in more detail in Chapter 8, Resolution of Noncompliance.

If, prior to the issuance of the notice of compliance, the contractor provides new evidence, the CO must conduct any necessary investigation and analyses to determine if the new evidence changes any of the initial findings and to ensure that the final findings are fully supported. A basic part of any additional investigation is verifying the credibility of the new evidence.

CHAPTER 3
CONSTRUCTION INDUSTRY COMPLIANCE PROGRAM

3A INTRODUCTION

This chapter contains procedures for conducting compliance reviews of construction contractors and subcontractors, including those involved in federally assisted construction projects. The purpose of the reviews is to determine whether contractors are complying with requirements prohibiting discrimination, and requiring affirmative action to ensure equal employment opportunity without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or protected veteran status. Additionally, federal contractors and subcontractors are prohibited from, under certain circumstances, taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers. This chapter also contains procedures specific to Mega Construction Projects.[171]

3B COVERAGE AND CONTRACT CLAUSES

Federal construction contractors, if they have a construction contract of the requisite amount with a federal agency,[172] are covered by Executive Order 11246, as amended; VEVRAA, as amended; and Section 503, as amended. These authorities also cover construction contractors if they have a contract or subcontract with a nonconstruction contractor or another construction contractor, and the:

- Contract or subcontract is necessary in whole or in part to the performance of the covered contract; or
- Contractor or subcontractor performs, undertakes or assumes any portion of the contractor's obligation under a covered contract.

Federally assisted construction contracts and subcontracts are covered by the Executive Order but are not covered by Section 503 or VEVRAA.[173]

The following subsections provide COs additional guidance on the requirements of these legal authorities.

---

[171] Mega Construction Projects are defined as a construction project spanning more than one year, with a value of at least $25 million.

[172] For current jurisdiction thresholds for OFCCP coverage, see *https://www.dol.gov/ofccp/taguides/jurisdiction.htm*.

[173] EO 11246, as amended, Sec. 301.

3B00 REGULATIONS APPLICABLE TO CONSTRUCTION CONTRACTORS

Regulations applicable to the affirmative action requirements of construction contractors and federally assisted construction contractors under Executive Order 11246 are published primarily in 41 CFR Part 60-4. Specific provisions in other parts of 41 CFR Chapter 60 are also applicable to federal and federally assisted construction contractors.[174] The regulations implementing Section 503[175] and VEVRAA[176] apply to contractors and subcontractors with a federal construction contract or subcontract covered under those laws. As mentioned earlier, the regulations implementing Section 503 and VEVRAA do not apply to federally assisted construction contracts and subcontracts.

3B01 REQUIRED BID SOLICITATION NOTICE AND CONTRACT SPECIFICATIONS FOR CONSTRUCTION CONTRACTS

Bid solicitations for all federal and federally assisted construction contracts in excess of $10,000 must include the "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)" found at 41 CFR 60-4.2(d) and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)" found at 41 CFR 60-4.3(a).

The "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)" (referred to in this chapter as the "Notice") sets forth the goals for minority and female participation in construction trades in covered areas, identifies the covered areas and requires that contractors provide OFCCP with written notice about construction subcontracts in excess of $10,000 that are awarded in connection with the covered contract. In addition, the Notice must be included in:

- Grants, contracts, subcontracts, loans, insurance or guarantees involving federally assisted construction covered by Part 60-4 as a condition of these agreements; and
- Construction contracts and subcontracts that are necessary in whole or in part to the performance of a covered nonconstruction contract.

The "Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)" (referred to in this chapter as the "Specifications") describe the affirmative action obligations and detail the specific affirmative action steps construction contractors must implement to ensure equal employment opportunity. The Specifications must be in:

- Solicitations for offers and bids on all federal and federally assisted construction contracts in excess of $10,000 in accordance with 41 CFR 60-4.6;

---

[174] 41 CFR Parts 60-1, 60-3, 60-20, 60-40, and 60-50.
[175] 41 CFR Part 60-741.
[176] 41 CFR Part 60-300.

- Grants, contracts, subcontracts, loans, insurance or guarantees involving federally assisted construction covered by 41 CFR Part 60-4, as a condition of these agreements;

- Federal and federally assisted construction contracts in excess of $10,000 in accordance with 41 CFR 60-4.6; and

- Construction subcontracts in excess of $10,000 that are necessary in whole or in part to the performance of nonconstruction federal contracts and subcontracts.[177]

By operation of the Executive Order, the Notice and the Specifications discussed in this section are deemed to be incorporated in every solicitation and every covered contract and subcontract. This is true whether or not they are expressly incorporated in the solicitation or contract, and whether or not the contract is written.[178]

3B02 REQUIRED EQUAL OPPORTUNITY CONTRACT CLAUSES FOR CONSTRUCTION CONTRACTS

The equal opportunity clauses may be expressly included in construction contracts and subcontracts, or incorporated by reference.[179] The clauses are, however, a part of the construction contracts even if the contractor does not physically incorporate them into the contract document.[180] If a contractor fails to include the required clauses in covered subcontracts and purchase orders, either in their entirety or by reference, a CO shall cite this omission as a violation in the closure document.

a. *Federal Construction Contracts.* Each federal contracting agency must include the equal opportunity clauses found at 41 CFR 60-1.4(a), 60-300.5 and 60-741.5, in all covered prime construction contracts. And, each federal contractor and subcontractor must include the equal opportunity clauses in its covered construction subcontracts – either in their entirety or by reference.[181] An example of an acceptable way to incorporate all three equal opportunity clauses by reference is found below. Note that the example is in bold typeface for compliance with Section 503 and VEVRAA regulations. If a contractor incorporates the clauses by reference, but does not use the appropriate language or style for Section 503 and VEVRAA equal opportunity clauses, then a CO shall cite the failure as a violation in the closure document.

> **This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin,**

---

[177] 41 CFR 60-4.3(a).
[178] 41 CFR 60-4.9.
[179] 41 CFR 60-1.4(d), 60-300.5(d) and 60-741.5(d).
[180] 41 CFR 60-4.9, 41 CFR 60-300.5(e) and 60-741.5(e).
[181] 41 CFR 60-1.4(a) and (b) at paragraph (7); 60-1.4(c); 41 CFR 60-300.5, paragraph 11; and 41 CFR 60-741.5, paragraph 11.

or for inquiring about, discussing, or disclosing compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

b. *Federally Assisted Construction Contracts.* Applicants for federal assistance involving a construction contract are required to include the equal opportunity clause found at 41 CFR 60-1.4(b) in all covered federally assisted construction contracts. Moreover, each administering agency must include this clause as a condition of any grant, contract, loan, insurance or guarantee involving federally assisted construction. Federally assisted construction contractors and subcontractors are to incorporate only the Executive Order equal opportunity clause in subcontracts – either in its entirety or by reference. An example of an acceptable way to incorporate the equal opportunity clause by reference is found below.

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

c. *Nonconstruction Contractors.* Nonconstruction contractors must include the appropriate clauses in construction subcontracts that are necessary, in whole or in part, to the performance of a covered nonconstruction contract. The clauses may be expressly included in the contract or incorporated by reference, in the same manner as described above. The clauses are, however, a part of the construction contracts even if the contractor does not physically incorporate them into the contract document.

3B03 SUPPORT FROM OTHER AGENCIES RELATED TO CONSTRUCTION CONTRACTORS

The CO must identify the contract(s) on which the contractor's obligations are based. The CO records this information in the case file and related correspondence. Information on contract awards may be obtained from other federal agencies.

Various federal, state and local government contracting offices may be able to provide notice of contract awards and help ensure that the contractors include equal opportunity and affirmative action clauses in construction contracts. For example, OFCCP has an MOU with the General

Services Administration (GSA) that provides for information sharing on construction contract awards.[182]

Other agencies within the DOL may also have information not available from the contractor. For example, the WHD may be able to provide the number of employees of the contractor by reviewing payroll records certified under the Davis-Bacon Act. Other sources of interagency cooperation may include the ETA funded agencies such as Job Corps, Office of Apprenticeship, and YouthBuild, and the Women's Bureau.

3B04 MEGA CONSTRUCTION PROJECTS

A mega construction project is a construction project spanning more than a year, with a value of at least $25 million. OFCCP developed its Mega Construction Project Program to facilitate construction contractors' access to a pipeline of diverse talent for some of this nation's largest construction projects. The focus of this program is first and foremost on providing compliance assistance and facilitating relationships that connect contractors with jobs to qualified people seeking jobs.

The program includes providing intensive compliance assistance to participating construction contractors, and facilitating connections between contractors and job training and recruiting sources, unions, local or community based organizations, and federal, state and local governments. Through this approach, the expectation is that there will be an increase in the representation of women and minorities in the construction trades. While contractor participation in the mega construction program is not required, it is encouraged.

On mega construction projects, COs can monitor the solicitations, offers and bid documents to ensure the funding and contracting agencies include the Notice.[183] Additionally, COs coordinate with the funding agency to ensure incorporation of the Specifications and appropriate equal opportunity clauses into prime contracts and subcontracts.[184] Once the solicitation is made public, the District Director or Assistant District Director should participate in as many pre-bid conferences as feasible that the federal funding agency and the entity receiving federal assistance may schedule with prospective bidders. Once the prime contract is awarded, the District Director or Assistant District Director should contact[185] the prime contractor for two purposes:

- To offer the prime contractor the opportunity to participate in the program, so as to receive extensive compliance assistance and support; and
- To explain the prime contractor's role and responsibilities if it participates in the program.

---

[182] See "U.S. Department of Labor and U.S. General Services Administration: Memorandum of Understanding on Mega Construction Projects," signed June 2013.
[183] See FCCM 3B01.
[184] 41 CFR 60-1.4(a) or (b), 41 CFR 60-4.3, 41 CFR 60-300.5, and 41 CFR 60-741.5.
[185] See Letter L-10 – Construction Outreach for New Projects.

If a mega construction project is located on or near an Indian reservation, the CO should contact OFCCP's Indian and Native American Employment Rights Program (INAERP) before contacting tribal officials, TEROs or Indian and Native American community based organizations. INAERP will work with the CO to ensure the proper tribal officials are notified about the project and determine their level of involvement based on their resources and tribal infrastructure. INAERP will also conduct introductory meetings via conference call and assist with providing a list of resources for contractors and subcontractors to use in the creation of linkages with tribal entities and Indian and Native American community based organizations. The INAERP staff is available throughout the course of a review to assist COs.

3C GENERAL PRINCIPLES APPLICABLE TO THE CONSTRUCTION INDUSTRY

The equal opportunity clauses prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, national origin, disability and protected veteran status.[186] Additionally, the clauses prohibit contractors from, under certain circumstances, taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers. They also require that contractors take affirmative action to ensure equal employment opportunity. This section covers the use and application of the goals for the participation of minorities and females in the construction workforce, preconstruction conferences and notice of subcontract awards. The Section 503 Utilization Goal and the VEVRAA Hiring Benchmark are addressed in Section 3N.

3C00 EXECUTIVE ORDER GOALS

Goals serve as reasonably attainable objectives and allow contractors to measure progress toward achieving equal employment opportunity. They are not quotas. Failure to meet any goal, in and of itself, does not constitute a violation of the Executive Order. Contractors must demonstrate good faith efforts toward meeting their minority and female participation rate goals contained in the bid solicitation. These goals are determined by the Director of OFCCP and are issued in accordance with 41 CFR 60-4.6 by geographic area.

The participation rate goals are expressed as a percentage of the hours a contractor's aggregate workforce worked in each trade on all construction work performed in the geographic area. A covered construction contractor must apply the participation rate goals on all of its federal, federally assisted, and nonfederal construction work. If a covered construction contractor performs work in multiple geographic areas, the contractor must make good faith efforts to achieve the goals for women and minorities in each geographic area where work is being performed.

[186] 41 CFR 60-1.4(a) and (b), 41 CFR 60-300.5 and 41 CFR 60-741.5.

a. *Goals for Women.* The current goal for the utilization of women is 6.9 percent of work hours and applies to all of a contractor's construction sites, regardless of where the federal or federally assisted contract is performed.[187]

b. *Minority Group Goals.* The current goals for the utilization of minorities are formulated in terms of work hours performed in a specific Standard Metropolitan Statistical Area (SMSA) or non-SMSA.[188] For example, ABC Company has a federal contract for construction work in SMSA X. The goals for SMSA X apply to all of ABC's construction work in SMSA X, both the federally involved and the nonfederally involved construction work. In addition, if ABC Company performs construction work in SMSA Y, it would apply the SMSA Y goals to all its construction work in SMSA Y, whether or not it had a federal or federally assisted contract in SMSA Y.

3C01 PRECONSTRUCTION CONFERENCES

Contracting and administering agencies may use preconstruction conferences to discuss any aspect of the contractual requirements of a project including EEO. OFCCP regional, district or area office staff may participate in these conferences at the invitation of the contracting agency. The contracting agency reviews the construction contractor's nondiscrimination and affirmative action obligations, including applicable minority and female participation rate goals for the geographical area in which work is to be performed, and the contractor's reporting and recordkeeping requirements necessary to demonstrate compliance. COs may also send out a letter to summarize EEO obligations enforced by OFCCP and to offer compliance assistance for new construction contractors.[189]

3C02 NOTICE OF SUBCONTRACT AWARDS

The Notice explained in Section 3B01[190] requires the contractor to notify the Director of OFCCP of the name, address, telephone number and employer identification number of each subcontractor; the name, phone number, and email address of the contractor representative submitting the notification; the prime contract number; the estimated dollar amount of the subcontract; its estimated starting and completion dates; and the geographical area (SMSA or non-SMSA) in which the work is to be performed. This notice must be in writing and provided within 10 business days of the award of a subcontract in excess of $10,000.

---

[187] This goal was originally published in the Federal Register of April 7, 1978, 43 FR 14899, 14900, as Appendix A. This goal was extended indefinitely based on a notice published in the Federal Register on December 30, 1980. See 45 FR 85750, 85751 (Dec. 30, 1980).

[188] 45 FR 65979, 65984, Appendix B-80 (Oct. 3, 1980).

[189] See Letter L-10 – Construction Outreach for New Projects.

[190] See 41 CFR 60-4.2(d).

3D THE COMPLIANCE REVIEW PROCESS

COs will find that several stages are involved in a compliance review of a construction contractor. The four major stages are listed below and are discussed in detail in Sections 3E through 3R of this chapter.

1. Pre-Review Preparation (FCCM 3E)
2. On-site Review (FCCM 3F)
    - Entrance Conference (FCCM 3G)
    - Review of Records (FCCM 3H)
    - Evaluation of Policies, Practices and Procedures (FCCM 3I)
    - Interviews (FCCM 3J)
    - Worksite Inspections (FCCM 3K)
    - Identification and Investigation of Discrimination (FCCM 3O)
    - Exit Conference (Section 3P)
3. Compliance Review Report (Section 3Q)
4. Notification of Compliance Review Results (Chapter 8)

The major focus of a review of a construction contractor is the contractor's construction employees who are engaged in on-site construction, including those construction employees who work on a nonfederal or nonfederally assisted construction site within a particular geographical area. However, unless coverage is based solely on a federally assisted construction contract, the contractor's entire workforce may be the subject of the review under Executive Order 11246, Section 503 and VEVRAA. As noted at FCCM 3B, federally assisted construction contracts are subject only to Executive Order 11246. In evaluating a contractor's compliance with the equal opportunity clauses in nontrade as well as trade occupations, COs must focus on any indications of potential discrimination and lack of affirmative action.

If the contractor has a covered federal contract (not federally assisted) and 50 or more employees, the compliance review will also include implementation of the Section 503 and VEVRAA AAP(s).[191]

[191] For current jurisdictional thresholds, see *https://www.dol.gov/ofccp/taguides/jurisdiction.htm*.

3E PRE-REVIEW PREPARATION: SCHEDULING AND COORDINATION WITH OTHER AGENCIES

This section discusses the various steps and actions that COs must take prior to starting a compliance evaluation of a contractor establishment.

3E00 INITIAL CONTACT WITH THE CONTRACTOR AND SCHEDULING

The CO should notify the senior official at the contractor's establishment by telephone of the scheduled review. The telephone contact will include a discussion of where the review will take place, set a date for the review to begin, indicate the need for an on-site work area and confirm the location and availability of books and records that contain relevant information on the contractor's aggregate workforce in the covered area.

The CO must provide the contractor with written confirmation of the date and time of the review at least three business days prior to the on-site unless there are exigent circumstances. The letter is sent certified mail, return receipt requested, to the senior official at the contractor's establishment with a copy to the CEO at the corporate address.[192] Mailing to both addresses is required unless the establishment and corporate offices are the same. The notification includes an enclosure that specifies items that the contractor is to make available for inspection and copying during the review.

3E01 PREPARATION AND MAINTENANCE OF THE CASE CHRONOLOGY LOG

COs must prepare and maintain a Case Chronology Log for each compliance evaluation. This log is an integral part of the case file and is an invaluable tool in tracking the progress and the status of the case.[193] It is, therefore, important that COs keep the Case Chronology Log current. A Case Chronology Log includes:

a. Event summaries that begin with the initial contact with the contractor and continue through to the approval of case closing documents.

b. Documentation of all telephone conversations, e-mails, correspondence and meetings associated with the evaluation, indicating the date, nature of the contact, person contacted, summary of discussion or actions taken, and the CO's name.

Records of telephone calls in the log should include the time of the call. All meetings must include the date, location and names of the people in attendance. In addition, record in the log all requests for data and records, and the dates the CO received these items. COs must record all events and actions as they occur.

Many COs print a hardcopy of the Case Chronology Log to facilitate their ability to write in the day-to-day events and activities as they occur. This practice is acceptable, as long as the final,

---

[192] Letter L-9 – Construction Compliance Evaluation Notice and Enclosure.
[193] See FCCM 1B02 – Creation and Maintenance of the Case File; Figure F-2 – Case Chronology Log (CC-53).

official Case Chronology Log included in the case file is typed, legible and maintained electronically.

3E02 CREATION AND MAINTENANCE OF THE CASE FILE

COs must create and maintain a case file for each scheduled compliance evaluation. The case file generally consists of various folders so, in order to create a case file, COs must create individual folders using the below headings.[194]

a. Folder 1: Construction SCER Findings (See FCCM 3Q)

b. Folder 2: Case Chronology Log, Correspondence and Meeting Notes

c. Folder 3: Employment Handbooks, Collective Bargaining and Other Agreements, and Miscellaneous Items

d. Folder 4: SOL Opinions, JRC Memoranda and Post-Construction SCER Update

e. Folder 5: Progress Reports

f. Folder 6: Historical Review Results

g. Folder 7: Monthly Employment Hours and Pre-Construction Conference Materials

COs add information and documents to the appropriate folder throughout the course of the compliance evaluation. If enforcement becomes necessary, COs provide the compliance evaluation case file to the Solicitor's Office for further action. It is critically important that all information obtained, observed or reported be part of the case file and remain there through case closure.

Once again, maintaining these files is crucial and includes labeling the folder and any additional folders or subfolders needed (*e.g.,* Folder 1A, 1B). Labeling is especially useful when the material in a folder is voluminous. COs must arrange the documents in each folder by date, with the most recent document on top. COs are required to attach certain documents in each folder to the left or right side of the folder, as indicated below. Generally, whenever there are ten or more separate documents in a folder, the CO must prepare an index and place it in the front of that folder.

A complete and thorough case file is critically important, especially in the event that enforcement becomes necessary. Therefore, COs must be sure that the case file contains all documents obtained or generated during the compliance evaluation, not just the material that supports the conclusions reached. This means, for example, that the file includes both evidence that supports the CO's violation findings, as well as evidence that supports the contractor's rebuttal. The case file must contain all contractor records and unaltered copies of all e-mail

[194] Though the case file folder numbers and titles do not change, the case file contents may vary based upon the investigative procedures used in the compliance evaluation, and the availability and existence of specific documents.

correspondences in paper or electronic format. Drafts of OFCCP memoranda are not included in the case file; COs retain only final versions of agency memoranda.

If a CO is submitting a case for enforcement, a Transmittal Memorandum, as discussed in Chapter 8 of this Manual on the resolution of noncompliance, must accompany the case file. A complete copy of at least one contract or subcontract establishing coverage during the period at issue, continuing to the present, is also required. Additionally, the enforcement submission includes copies of all relevant analyses, properly labeled, in electronic format. Remember to keep a copy of all files submitted for enforcement in the appropriate field office.[195]

3E03 CONTACTING EEOC, VETS AND OTHER AGENCIES

Simultaneous with the mailing of the on-site confirmation letter, COs will seek information regarding the employment policies and practices of the contractor being scheduled from the EEOC, VETS (if appropriate) and other EEO and labor law enforcement agencies. Such information provides a better understanding of the contractor's workforce and operations, and may indicate potential problem areas.[196]

a. *EEOC and State and Local FEP Agencies.* The CO sends an inquiry letter[197] simultaneous with the mailing of the Construction Compliance Evaluation Notice. The inquiry letter goes to the appropriate district office of the EEOC, and to the appropriate state and local FEP agencies. It requests information on discrimination complaints filed against the contractor, and any other information that may be pertinent to assessing the contractor's EEO posture. After 15 calendar days, COs must follow up by telephone with any agency that failed to respond or from which additional information is needed.

   OFCCP has an MOU with EEOC that includes provisions about information sharing, complaint referrals, coordination and consultation. COs are urged to become familiar with the provisions of this MOU.

b. *VETS, ESDS and DOL Enforcement Agencies*. Unless jurisdiction is based solely on federally assisted construction contracts, COs must contact the regional VETS office and the appropriate local ESDS to request any information that could be pertinent to the pending review, including information regarding the contractor's compliance with the mandatory job listing requirements of 41 CFR 60-300.5(a).[198] When conducting compliance evaluations and complaint investigations, COs must query the VETS-4212 database to verify that a federal contractor completed the annual reporting requirements for the appropriate reporting year. Moreover, the information in this database, in combination with data provided pursuant

---

[195] See Appendix A-5 – Index for a Construction Review.

[196] COs would not contact VETS for information if jurisdiction is based solely on federally assisted construction contracts.

[197] A sample of this letter is in this Manual as Letter L-2, Sample Inquiry Letter for Requesting Complaint Data from EEOC and State and Local FEPs.

[198] Sample letters are in this Manual, including Letter L-3, Sample Inquiry Letter for Requesting Job Listing Requirements from Employment Service Delivery Systems, and L-4, Sample Inquiry Letter for Requesting Information on Pending Review from Veterans' Employment and Training Service.

to 41 CFR 60-300.44(k), may be useful when analyzing an employer's recruitment and hiring practices. OFCCP provides a periodic report to VETS of contractors who have not filed the VETS-4212.[199]

Additionally, COs should check the DOL Enforcement Database at https://enforcedata.dol.gov/ for closed complaints and compliance evaluations of the contractor's establishment, and contact other DOL enforcement agencies to identify the number, types and status of any complaints filed against the contractor. For example, the WHD may have filed FMLA violations related to the contractor that are the subject of a compliance evaluation.

3E04 INFORMATION ON EEO COMPLAINTS FILED WITH OR BY OTHER AGENCIES

COs must carefully examine all information regarding complaints against a contractor that they receive from federal, state and local agencies in response to a letter of inquiry. COs enter basic information about these complaints in I. Background of the Construction SCER, including:

- The agency with which the complaint was filed;
- The jurisdictional or legal basis (*e.g.,* race, sex) of the complaint;
- The current status of the complaint; and
- The area of the contractor's workforce involved in the complaint.

COs will note any patterns in the types of complaints filed and any discrimination findings made on them. For example, there may be a clustering of complaints filed by employees in certain trades, or by applicants or employees from a particular race, religion, ethnic group or sex; by covered veterans; or by individuals with disabilities. As the review progresses, COs must cross-reference complaints to any potential problem areas they identify. There may be, for example, indications of a lack of good faith efforts, statistical indicators of discrimination, or concentration or underrepresentation in areas where complaints were filed.

When appropriate, COs will contact the appropriate EEOC office or state or local FEP agency to arrange to review relevant discrimination complaint files as part of the compliance evaluation. This can be particularly useful when a CO identifies potential systemic problems in complaint areas.

On-site, COs must compare any information a contractor provides with respect to current or past complaints to the information received from other agencies. COs will note discrepancies and information not provided by the contractor for possible further investigation during the review, and will seek an explanation and additional information from the contractor.

[199] 41 CFR 60-300.60(c).

3E05 REVIEW OF COMMUNITY RESOURCE FILES

Each field office must maintain resource files on the communities within its geographic area. For each community, these files should identify local organizations that represent or provide services to protected groups. These would include groups and organizations representing or servicing women, racial and ethnic minorities, veterans, individuals with disabilities, and individuals who identify as lesbian, gay, bisexual or transgender. Some COs may not be knowledgeable about the local organizations in the area. In these instances, they must review the resource files and introduce themselves to representatives from the various organizations. The Communications Team in the national office and ROCs may also be useful resources.

If a contractor is located near an Indian and Native American Reservation with a TERO or other employment organization on the reservation, the CO must contact INAERP before making contact with these organizations. Chapter 2 of this Manual discusses the importance of linkages and how a CO can establish relationships with tribal communities, and Indian and Native American community-based organization located near construction projects.

3E06 REVIEW OF OFCCP COMPLIANCE ACTIONS

COs must determine whether another OFCCP office recently reviewed or is reviewing the same contractor when scheduling a compliance review. If another OFCCP office is currently reviewing the selected contractor, the CO or the supervisor must contact the supervisor of the other OFCCP office to discuss what issues, if any, are present in their ongoing case. This is particularly important for detecting company-wide practices that result in discrimination.

COs may also examine closed case files, or OFIS, to identify issues relevant to the current evaluation. They will also note the terms of any CA or consent decree, including back pay, hires and other remedial measures contained in the CA or consent decree. In addition, COs must determine whether a contractor has been subject to an OFCCP complaint investigation and, if so, review the complaint file for any violations or problems identified. Any violations found in these past compliance actions must be recorded in the Construction SCER at I. Background Information. While the existence of a past problem is not considered evidence of the existence of present problems, COs must be alert to any indications that past problems remain unresolved, have recurred or that similar problems have arisen.

3E07 INTERAGENCY COORDINATION FHWA

If the administering agency is the Federal Highway Administration, at DOT, a DOL-DOT MOU requires that DOT be notified of the scheduled review.[200]

[200] See "Interim Memorandum of Understanding Between the Department of Labor and the Department of Transportation" signed 1979.

3F ON-SITE REVIEW PROCESS OVERVIEW

The second major stage in a compliance review of a construction contractor is the on-site review. The purpose of the on-site review is to determine if the contractor complied with the requirements of Executive Order 11246 and, as applicable, Section 503 and VEVRAA. During this review, COs will examine personnel activity, compensation data and work hours. In addition, they will evaluate the contractor's affirmative action efforts to comply with the Executive Order, Section 503 and VEVRAA, if applicable. There are several activities that take place during the on-site review process and they include:

- Entrance conference (FCCM 3G);
- Review of records such as personnel activity, compensation and work hours (FCCM 3H);
- Evaluation of policies, practices and procedures assessing compliance with the Executive Order 11246 affirmative action specifications (FCCM 3I);
- Evaluation of compliance with Section 503 and VEVRAA obligations (FCCM 3N);[201]
- Employee and supervisor interviews (FCCM 3J);
- Physical inspection of the contractor's worksites (FCCM 3K);
- Identification and investigation of discrimination (FCCM 3O); and
- Exit conference (FCCM 3P).

Each of the activities of the on-site review process are discussed in FCCM 3G through 3P.

3G ENTRANCE CONFERENCE

The entrance conference should be attended by the contractor's CEO or designee. The entrance conference is intended to provide information to the CEO and explain the purpose of the compliance review. During this conference, a CO may, as appropriate:

- Provide a brief explanation of the compliance review process;
- Provide information on OFCCP policies, practices, rules and regulations;
- Provide an estimate of the amount of time the on-site review will require;

[201] Compliance with Section 503 and VEVRAA obligations does not occur if the contractor is working only on federally assisted construction contracts.

- Confirm the availability and location of the contractor's records and documentation of compliance with the affirmative action specifications and obligations;
- Request cooperation for employee and supervisory interviews;
- State the need for and arrange to inspect federal and nonfederal worksites; and
- Establish a tentative date for the exit conference.

3H EXECUTIVE ORDER 11246 REVIEW OF RECORDS

During the process of reviewing records as a part of the on-site review, the CO must record any matters that appear questionable. The CO should follow up on these matters by gathering additional documentation, interviewing employees and interviewing any other relevant people.

In this section are discussions on the review of various contractor records, including items such as payroll records, employment activity records, collective bargaining agreements and personnel policies.

3H00 PAYROLL RECORDS

In reviewing the contractor's payroll records, the CO should determine at least three things:

- The number of months of payroll activity to review in order to evaluate progress toward work hour participation rate goals;
- The existence of uniformity in the assignment of employees to various project sites; and
- The equity or lack thereof in allowing or granting overtime and other benefits.

a. *Number of Months to Review.* Review the contractor's payroll records for at least a six-month period. This review is to evaluate progress toward attaining work hour participation rate goals for minorities and women in each trade. CO's must review payroll records to determine the percentage of work hours by minorities and women out of the total hours worked by the contractor's employees in each trade.

b. *Uniformity of Assignment.* Evaluate the records to determine whether there is uniformity in the assignment of employees to various project sites (federal and nonfederal; commercial and residential; urban and rural). COs will determine whether certain types of projects pay more than others and, if so, whether women and minorities are provided equal opportunities for assignment to the better paying jobs.

c. *Equitable Overtime.* Evaluate the records to determine whether overtime, incentives, bonuses and other job benefits (*e.g.,* holiday bonuses, pay advances, loans, and profit sharing) are provided without regard to race, color, or sex.

3H01 EMPLOYMENT ACTIVITY RECORDS

COs must determine how the contractor processes applications, union referrals and walk-in applicants. They must determine if the contractor is disproportionately rejecting qualified minorities and women. COs must also determine the contractor's reasons for the rejections. When selection procedures are found to have an adverse impact, COs must refer to the procedures discussed in FCCM Chapter 1 for additional guidance.[202]

Like supply and service evaluations, COs will analyze the contractor's hiring, promotions and separations, as well as conduct a compensation analysis when reviewing the contractor's employment activity. For guidance on conducting the compensation analysis, see FCCM 1P. The findings of the analyses must be included in the Narrative Summary of the Construction SCER, with supporting documents attached.

If the project is located on or near an Indian reservation, the CO should, during a review of employment activity records, inquire if the contractor has extended a publicly announced preference in employment to Indians living on or near the Indian reservation. This hiring preference is permitted under Executive Order 11246. However, contractors and subcontractors extending such a preference shall not discriminate among Indians on the basis of religion, sex, or tribal affiliation, and use of such a preference does not excuse a contractor from complying with the other requirements in 41 CFR Chapter 60.[203]

3H02 COLLECTIVE BARGAINING AGREEMENT

When a contractor asserts that hiring is controlled through a union hiring hall in accordance with a collective bargaining agreement, the CO must review the agreement to verify the assertion. If the collective bargaining agreement is not clear, the CO should contact the union hall to determine the process. If the collective bargaining agreement does not support the contractor's claim, the CO must evaluate the contractor's good faith efforts without considering its relationship with the union hiring hall.[204]

3H03 INCLUSION OF THE EQUAL OPPORTUNITY CLAUSE IN SUBCONTRACTS

COs will examine solicitations, purchase orders and subcontracts to ensure inclusion of the appropriate clauses as described in FCCM 3B01 and 3B02 above. In addition, COs will examine the contractor's notification to its unions of its commitments under Executive Order 11246, Section 503 and VEVRAA.[205]

---

[202] COs should be aware, however, that the adverse impact guidance discussed in FCCM 2M, is based on the UGESP recordkeeping requirements for contractors with 100 or more employees. As most construction contractors have smaller workforces, they would instead be subject to the simplified recordkeeping requirements at 41 CFR 60-3.15(A)(1) that apply to contractors with less than 100 employees.

[203] 41 CFR 60-1.5(a)(7).

[204] See Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246), paragraph 5, set forth at 41 CFR 60-4.3(a).

[205] 41 CFR 60-1.4(a), 41 CFR 60-1.4(b), 41 CFR 60-300.5(a), and 41 CFR 60-741.5(a).

3H04 REVIEW OF PERSONNEL POLICIES FOR SEX DISCRIMINATION

As in a supply and service compliance evaluation, COs will examine the contractor's personnel policies and practices. COs will determine whether contractor policies make prohibited distinctions in the conditions of employment based on sex. Below are some areas of inquiry for COs.

a. *Conditions of Employment.* COs must examine whether contractor policies make prohibited distinctions in conditions of employment based on sex. Contractors must not make employment decisions based on stereotypes about how males and females are "supposed" to look or act. Such employment decisions are a form of sex discrimination prohibited by Executive Order 11246, as amended.

b. *Distinctions Based on Marital Status or Caregiver Responsibilities.* A CO should examine written policies and conduct interviews with contractor staff and employees regarding the implementation of policies and practices to identify whether distinctions between married and unmarried people apply equally to both sexes, including distinctions between single parents and married parents based on gender. In addition, the CO should assess contractor policies and practices to ensure that sex-based stereotypes about actual and perceived caregiving responsibilities are not in effect.

c. *BFOQ.* Contractors may not hire or employ employees on the basis of sex unless sex is a BFOQ reasonably necessary to the normal operation of the contractor's particular business or enterprise. As a part of most on-site visits, the CO will examine job qualifications as stated by the contractor. Under Title VII, sex has been found to be a BFOQ in extremely rare instances. Among them are:

   - *Authenticity.* Jobs involving a need for authenticity or genuineness, such as actors or models.

   - *Personal Privacy.* Jobs where the performance of essential job elements would entail substantial invasion of personal privacy. This is limited to situations where the normal operation of the contractor's business depends on the employee being the same sex as its employees or customers and there is no other way to ensure privacy. This is different from customer preference.

d. *Employment Opportunities.* Contractors may not exclude individuals from jobs they believe are dangerous or unsuitable for women to perform unless sex is a BFOQ. OFCCP follows Title VII principles when determining whether a policy excluding women from a job because of a concern about reproductive hazards is discriminatory. If a question relating to reproductive hazards arises during a compliance evaluation, the CO should discuss the issue with his or her supervisor.

e. *Compensation Discrimination.* The CO will also examine possible compensation discrimination issues. Compensation discrimination encompasses discrimination 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. Contractors cannot make distinctions in compensation on the basis of sex. FCCM 1M provides additional information on this issue.

f. *Employment Advertising.* The CO will examine the contractor's advertisements in newspapers online and in other media. The advertisements must not recruit or advertise for individuals for certain jobs on the basis of sex. Use of sex-specific terms for jobs (such as "linemen") is suspect but is not automatically a violation of Executive Order 11246. Where sex-specific language is used in conjunction with prominent language that clearly indicates the contractor's intent to invite applications without regard to applicants' sex, COs should not find a violation.

Several examples of the types of issues that COs may encounter related to a review of personnel policies are provided in 2K, Compliance with the Sex Discrimination Regulations.

3I EVALUATION OF IMPLEMENTATION OF AFFIRMATIVE ACTION STEPS SET FORTH IN 41 CFR 60-4.3(a) PARAGRAPH 7

In evaluating a contractor's compliance with the affirmative action steps, COs must verify that the records, interviews and other information provided by the contractor demonstrate the contractor's compliance. The CO's evaluation of the contractor's compliance is based on the contractor's effort to achieve maximum results from its actions. For compliance review purposes, the affirmative action specifications in 41 CFR 60-4.3(a) paragraph 7 are grouped into the following five major evaluation categories:

- Recruitment practices;
- Training;
- EEO policy and implementation;
- Personnel operations; and
- Contracting activity.

Each of these evaluation categories is discussed in subsections 3I00 through 3I04, below.

These categories correspond to the organization of the Form CC-40 Standard Compliance Evaluation Report (or the Construction SCER).[206] The CO will evaluate the VEVRAA and Section 503 affirmative action requirements from Part III.H of the Construction SCER. The discussion below provides instructions on completing the Construction SCER.

[206] See Appendix A-6 Standard Compliance Evaluation Report (Construction).

3I00 EVALUATION OF RECRUITMENT PRACTICES

The following subsections pertain directly to Part III.A of the Construction SCER and set forth the procedures for evaluating the contractor's recruitment practices.[207]

a. *Recruitment Sources.* The contractor must establish and maintain a current list of recruitment sources, including sources for minorities and women. The contractor must provide written notification to these recruitment sources and to community organizations when it or its union(s) has employment opportunities available. The contractor must maintain a record of recruitment source responses. See Item III.A.l. of the Construction SCER. To evaluate the contractor's compliance with this specification, the CO will:

- Determine whether the contractor maintains a current list of recruitment sources.
- Determine whether the list is current (has been updated within the last year); whether it contains an adequate number of active, available sources; and whether the recruitment sources listed are in operation, *i.e.*, active.
- Contact referral sources to verify that they received recruitment letters and emails, and to determine whether they actually made referrals.
- Interview employees involved in recruiting applicants and hiring supervisors to determine whether they use the list when vacancies occur.
- Review correspondence with recruitment sources. This review should:
  - Verify that the contractor sent and the recruitment sources received the letters, and that the contractor made follow-up contact.
  - Ensure that the letters contained a statement of the contractor's EEO policy and the nature of the employment opportunity.
  - Review the contractor's files, telephone logs or other evidence to determine if the contractor maintained copies or records of responses. Determine if the contractor followed-up on responses.

b. *Applicant Records*. In addition to preserving any personnel and employment record as described at 41 CFR 60-1.12, the contractor should maintain a current file of the names, addresses, telephone numbers, sex, race and ethnicity of each minority and female walk-in applicant or referral from a union, recruitment source or community organization, and of the action taken with respect to each individual.[208] If an individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, was not employed by the contractor, the documentation in the file should include the reason why

---

[207] Refer to 41 CFR Part 60-20, Discrimination on the Basis of Sex; 41 CFR Part 60-50, Religion/National Origin Guidelines; and 41 CFR 60-4.3(a) paragraph 7 steps b, c, d, i and j for more information.

[208] 41 CFR 60-4.3(a) paragraph 7 step c, 60-1.12(c), and 60-3.15A.

the individual was not hired (or referred) and any action the contractor took.[209] The CO should fully investigate any indications of possible discriminatory practices. To evaluate the contractor's compliance with this specification, the CO should:

- Determine whether the contractor maintains a current file that lists the names, addresses, telephone numbers, sex, race and ethnicity of each walk-in applicant and each referral from a union or community source.
- Evaluate the file for active construction recruitment sources such as unions and community referral organizations.
- Interview supervisors responsible for hiring to determine the general hiring procedure and any specific procedures they use to recruit workers, including minorities and women.
- Determine what sources the contractor uses to obtain job applicants. Sources may include, for example, walk-ins, union hiring hall, newspaper advertisements, word of mouth, and recruitment and training programs.

c. *Failure of Union to Refer.* The regulations require the contractor to immediately notify the Director, in writing, when a union(s) with which it has a collective bargaining agreement has not referred to the contractor a minority or woman sent by the contractor or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its contractual EEO obligations.[210]

   To evaluate the contractor's compliance with this specification, the CO should determine whether the contractor took any other actions to facilitate hiring the individual such as additional written contact with the union specifically requesting referral of that individual, or attempting to hire the individual directly, without union referral. Whenever the contractor states in writing that the union has not referred minorities and women or that other union actions have impeded its affirmative action efforts; there are allegations that the union has committed unlawful discrimination; or the CO becomes aware that union actions impede or threaten to impede the contractor's affirmative action efforts, the CO should discuss the matter with his or her supervisor as soon as possible.

d. *Directing Recruitment Efforts.* In accordance with regulations, the contractor is required to engage in recruitment efforts that reach out to all demographic groups in the recruitment area, including minority, women's and community organizations, and schools with minority and female students; and engage in recruitment efforts that reach out to recruitment and training organizations for minorities and women serving the contractor's recruitment area and employment needs.[211]

   Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor should send written

---

[209] See Item III.A.2. of the Construction SCER.
[210] 41 CFR 60- 4.3(a) paragraph 7, step d. See Item III.A.3. of the Construction SCER.
[211] 41 CFR 60-4.3(a) paragraph 7, step i.

notification to organizations in the recruitment area, describing the openings, screening procedures and test(s) to be used in the selection process. (See Item III.A.4. of the Construction SCER.)

To determine whether the contractor is in compliance with this specification, the CO should:

- Request written documentation of the contractor's efforts to recruit applicants for training and employment opportunities.
- Review documentation that the contractor provided timely notice to recruitment sources, including minority, women's and community organizations, at least one month prior to acceptance of applications for apprenticeship or training opportunities. The CO should also verify that appropriate sources have been contacted.

e. Employee Referrals. The regulations require the contractor to encourage employees, including present minority and female employees, to recruit others for employment openings.[212] When reasonable to do so, as required by the regulations, the contractor must provide after-school, summer and vacation employment to minority and female youth both on the worksite and in other areas of its workforce. To evaluate the contractor's compliance with this specification, the CO should:

- Interview minority and female employees to determine whether the contractor has encouraged them to recruit other minority individuals and women to apply for employment.
- Interview supervisors, minority and female employees to determine whether the contractor provides after-school, summer and vacation employment to minority and female youth.
- Review personnel records to verify employment of minority and female youths in after-school, summer and vacation job opportunities.

3I01 EVALUATION OF TRAINING

The contractor shall develop on-the-job training opportunities and participate in training programs that are relevant to the contractor's employment needs and are intended to upgrade the skills of its workers. These programs and opportunities must expressly include minorities and women.[213] Examples of possible programs and opportunities include apprenticeships and trainee programs relevant to the contractor's employment needs, especially those programs the U.S. Department of Labor funded or approved.[214]

To evaluate the contractor's compliance with this specification, COs must:

---

[212] 41 CFR 60-4.3(a) paragraph 7, step j.
[213] 41 CFR 60-4.3(a) paragraph 7, step e.
[214] See Item III.B.1. of the Construction SCER. Refer to 41 CFR Part 60-20, 41 CFR 68-4.3(a) paragraph 7, step e and Part III.B of the Construction SCER.

- Determine whether the contractor has developed and conducted any training programs and, if so, whether it has provided notice of these programs to its recruitment sources. Obtain copies of any letters informing recruitment sources or schools of training programs, including those to minority and women sources. Get the names of applicants that the contractor referred to the programs. Determine whether the contractor has employed and trained anyone below the journey level. If it has, describe what was done.

- Determine which trades are covered by formal apprenticeship programs (typically found in projects utilizing union labor) or other types of formal training programs not associated with trade unions. When either type of program is in place, a CO must determine the participation rate of minorities and women.

- When there are no formal programs for a particular trade, determine what, if anything, the contractor has done to provide on-the-job training, and the extent to which that training was made available to minorities and women.

- If the contractor provides on-the-job training, determine whether minorities and women have equal access to training in all trades. Determine whether minorities and women are performing all aspects of their trade or if the contractor is repeatedly assigning them to the same task.

- Determine whether the contractor has records of cash contributions, equipment supplied or contractor personnel provided as instructors for Office of Apprenticeship approved, or U.S. Department of Labor funded, or other training programs.

- Determine whether the contractor has records of specific hiring and training of workers from such programs. The CO should also determine the results of the contractor's efforts (*e.g.,* number of workers trained identified by race, ethnicity and sex, hours worked, hours trained, relative compensation, trade) and record the results in the report.

3I02 EVALUATION OF EEO POLICY IMPLEMENTATION

This subsection draws from 41 CFR Part 60-20; 41 CFR Part 60-50; 41 CFR 60-4.3(a) paragraph 7 steps g, h, l and p; and Part III.C of the Construction SCER. It covers five areas:

- Development of and dissemination of EEO policy;

- Review of EEO policy;

- External dissemination of EEO policy;

- Promotion policy; and

- Supervisory performance.

a. Development and Dissemination of Policy. The contractor shall develop and disseminate its EEO policy by providing notice of its policy to unions and training programs and by

requesting their help in meeting its EEO obligations. The contractor shall also include its EEO policy in any policy manual and collective bargaining agreement and publicize it in the company newspaper or annual report, if any. The contractor shall also specifically review the policy with all employees at least once each year and post it on bulletin boards accessible to all employees and applicants at each location where construction work is performed.[215]

To evaluate the contractor's compliance with this specification, COs must determine whether the EEO policy contains at least the following items:

- A statement that the contractor will not discriminate against employees and applicants for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin, and that it will take affirmative action to ensure that employees and applicants for employment will be employed and treated during employment, without regard to race, color, religion, sex, sexual orientation, gender identity or national origin;
- The name, telephone number and means of access to the contractor's EEO Officer;
- An assurance that this policy will be followed in all personnel actions; and
- The signature of the CEO and date.

COs must also determine whether the EEO policy is posted in conspicuous places available to employees and applicants. Several places may be appropriate for posting the EEO policy and some examples include company offices, project sites and project trailers, if applicable.[216]

In addition to determining whether the EEO policy is posted, the CO will determine if the Pay Transparency Nondiscrimination Provision is posted physically or electronically for employees and applicants and incorporated into employee handbooks and manuals.[217]

Interviews of employees are important for determining if the contractor reviewed EEO policy at least annually with all employees and personnel responsible for hiring, assignments and other personnel actions. Other actions COs must take to evaluate the contractor's compliance include:

- Determining whether unions, where applicable, and training programs have been notified and provided with a copy of the EEO policy. Obtain copies of correspondence, or other documentation of such notification; and
- Reviewing as applicable, policy manuals, collective bargaining agreements, company newspapers and/or annual reports for inclusion of the contractor's EEO policy.

b. Review of Policy. The contractor shall review, at least annually, the company's EEO policy and affirmative action obligations with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions, including specific review of

---

[215] See Item III.C.l. of the Construction SCER.
[216] 41 CFR 60-1.4(a) paragraph 1; 41 CFR 60-1.4(b) paragraph 1.
[217] 41 CFR 60-1.35(c); see, 41 CFR 60-1.4(a) paragraph 3 and 41 CFR 60-1.4(b) paragraph 3.

these items with all on-site supervisory personnel prior to the initiation of work at any job site. The contractor must maintain a written record of the time and place of these meetings, people attending, subject matter discussed and disposition of the subject matter.[218] Disposition of the subject matter may include any further action to be taken by attendees and participants. In evaluating the contractor's compliance with this specification, COs should:

- Substantiate through examination of meeting notes or other such documents that the contractor has conducted, at least annually, a review of the contractor's EEO policy and affirmative action obligations with all employees having any responsibility for hiring, job assignment, layoff, termination or other personnel decisions, including the transferring of employees to different job sites;

- Identify each job site at which the contractor has initiated work within the 12-month period prior to the start of the compliance review. Verify the date prior to the commencement of work at each such job site on which the contractor met with on-site supervisory personnel to discuss the contractor's EEO policy and affirmative action obligations; and

- Review the actions taken by the contractor to resolve any problems identified.

c. *External Dissemination of Policy.* The contractor shall disseminate its EEO policy externally by including it in any advertising in the media, including media directed at minorities and women. In addition, the contractor shall provide written notification to, and shall discuss its EEO policy with, other contractors and subcontractors with which it does or anticipates doing business.[219] In evaluating the contractor's compliance with this specification, the CO should:

- Review copies of advertisements to determine whether the contractor included its commitment to its EEO policy (*e.g.,* the EEO tag line as described in Chapter 2, 2M00(a)) and whether advertisements appeared in media announcements that reach all demographic groups in the recruiting area;

- Determine whether the contractor's written notification to other contractors and subcontractors with which it does or anticipates doing business is accurate and timely (at least at the start of each major contract); and

- Review and verify documentation such as telephone logs, file notes, etc., on the contractor's discussion(s) with other contractors and subcontractors to determine whether the contractor's EEO policy was discussed.

d. *Promotion Policy*. At least annually, the contractor shall inventory and evaluate all current minority and women employees for promotional opportunities.[220] The contractor shall encourage these employees to seek or to prepare for promotional opportunities through

---

[218] See Item III.C.2., of the Construction SCER.
[219] 41 CFR 60-4.3(a)7h and Construction SCER Item See Item III.C.3..
[220] 41 CFR 60-4.3(a) paragraph 7, step l and Construction SCER Item III.C.4.

appropriate training.[221] To evaluate the contractor's compliance with this specification, COs must:

- Review the contractor's policies and personnel procedures regarding upgrading and promotion; determine how first-line and other supervisors are selected and how collective bargaining agreements impact company policies;
- Review all promotions and the employees whom the contractor could have or should have considered;
- Obtain documentation of the contractor's annual inventory and evaluation of all employees for promotional opportunities; and
- Verify through interviews and a review of documentation that the contractor encouraged all employees, including minorities and women, to seek or prepare for promotional opportunities through appropriate training.

e. *Supervisory Performance*. The contractor shall conduct a review, at least annually, of all supervisors' adherence to and performance under its EEO policies and affirmative action obligations.[222] To evaluate the contractor's compliance with this specification, the CO should review letters, reports, performance evaluations, EEO training courses and materials and minutes of meetings. Interviews of supervisory personnel should be conducted.

3I03 EVALUATION OF PERSONNEL OPERATIONS

The CO should consider four areas during an evaluation of personnel operations: work environment, validation, effects of personnel practices and nonsegregation of facilities and activities.[223] This subsection draws from 41 CFR 60- 4.3(a)7, a, k, m and n and Part III. D of the Construction SCER. Each is discussed in turn in this section.

a. *Working Environment*. The contractor must ensure and maintain a working environment free of harassment, intimidation and coercion at all sites and in all facilities at which the contractor's employees are assigned to work.[224] Harassment, intimidation and coercion can take many forms on the job site. These actions may be directed toward employees or applicants on any protected bases. They may consist of verbal, visual or written abuse, such as insults, graffiti, posters, suggestive comments and demands, racial slurs, leering or pressure for sexual activity. They may also include physical aggressiveness such as touching, pinching, patting and shoving, or the hiding or sabotaging of tools and equipment. Whatever the action, it can create a stressful working atmosphere which impairs job

---

[221] ibid.

[222] 41 CFR 60-4.3(a) paragraph 7, step p. and Construction SCER Item III.C.5.

[223] Refer to 41 CFR Part 60-20; 41 CFR Part 60-50; 41 CFR 60-4.3(a) paragraph 7, steps a, k, m and n; and Part 1II.D of the Construction SCER for more information.

[224] 41 CFR 60-4.3(a) paragraph 7, step a, if unlawful harassment is identified, it is a violation of the equal opportunity clauses found at 41 CFR 60-1.4(a) and 41 CFR 60-1.4(b), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a).

performance and work relationships and often results in the victim quitting the job. During the physical inspection of the contractor's worksites, the CO should:

- Look for any physical evidence of intimidation, harassment, or coercion;
- Interview female and minority employees to determine whether there have been any incidents of harassment, intimidation or coercion;
- Determine whether such incidents were reported to the supervisor and if so, what action was taken to resolve the problem;
- Interview supervisory staff to determine whether they are aware of the contractor's obligation under this specification;
- Review contractor files (minutes of meetings, memoranda, etc.) to determine whether the contractor has discussed this specification with supervisors; and
- Review discharges and terminations and, where possible, interview minorities and women recently terminated, to determine if harassment or intimidation was a factor in their leaving the job.

Where possible, the contractor will assign at least two women to each construction project.[225] The contractor shall specifically ensure that all supervisory personnel are aware of, and carry out, its obligation to maintain such a working environment, with specific attention to minorities and women working at such sites or in such facilities.[226]

b. *Validation.* The contractor must validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.[227] COs should also refer to the discussion in Chapter 2 and to the "Questions and Answers to the Uniform Guidelines on Selection Procedures."[228] Procedures for identifying adverse impact resulting from employee selection procedures are in Chapter 1 and Chapter 2.

c. *Effect of Personnel Practices.* Contractors must ensure that seniority practices, job classifications, work assignments, opportunities for overtime and other personnel practices do not have a discriminatory effect on minorities and women by monitoring all personnel and employment related activities to ensure that the specifications are being carried out.[229] In evaluating the contractor's compliance with this specification, COs will:

---

[225] 41 CFR 60-4.3(a) paragraph 7 step a.
[226] See Item III.D.l., of the Construction SCER.
[227] See Item III.D.2 of the Construction SCER. Under 41 CFR 60-3.15, contractors with 100 or fewer employees are not required to make adverse impact determinations or maintain validity evidence.
[228] See 44 FR 11996, 12009 (Mar. 2, 1979) supplemented by 45 FR 29350 (May 2, 1980).
[229] 41 CFR 60-4.3(a)7.m. See Item III.D.3. of the Construction SCER.

- Determine whether the contractor's personnel policies and practices have a discriminatory effect; and

- Review personnel policies and practices such as transfers that create employment opportunities, seniority practices, job classifications, work assignments (*e.g.,* minorities and women sent only to federally or state funded projects), layoff procedures, project locations, wage rates,[230] overtime hours for discriminatory effects.

d. *Nonsegregated Facilities and Activities.* The contractor must ensure that all job sites, facilities and company activities are nonsegregated, except for separate or single user toilets and changing facilities where necessary to assure privacy between the sexes.[231] In evaluating the contractor's compliance, during the worksite inspection, the CO should:

- Determine whether the contractor provides and maintains adequate toilet and changing facilities to ensure privacy between the sexes; and

- Interview management and employees to determine whether announcements of company social/recreational activities have been posted and are made available to all employees.

3I04 EVALUATION OF CONTRACTING ACTIVITY

One element of a good faith commitment to equal employment opportunity is the use of small disadvantaged businesses or disadvantaged business enterprises as subcontractors.[232] These efforts must be documented. This subsection draws from 41 CFR 60-4.3(a) paragraph 7, step o and Part III.E of the Construction SCER; COs should refer to these provisions for more information. Records of all solicitations of offers for subcontracts from construction contractors and suppliers that are small disadvantaged businesses or business enterprises, including circulations of solicitations to minority and women's contractor associations, must be maintained and produced upon request.[233] In assessing the contractor's efforts in this regard, the CO should:

- Determine whether there are solicitations to small disadvantaged businesses or disadvantaged business enterprises, and minority and female contractor associations;

- Verify that the solicitations to small disadvantaged businesses or disadvantaged business enterprises are made on the same basis as those to larger contractors.

---

[230] COs are reminded that wage rates may be specified in Collective Bargaining Agreements.

[231] 41 CFR 60-4.3(a) paragraph 7, step n. See Item III.D.4. of the Construction SCER.

[232] 41 CFR 60-4.3(a) paragraph 7, step o. Regulations in place as of the time of the publication of this version of the FCCM refer to solicitation of offers from minority and female construction contractors and suppliers. Affirmative action programs in federal procurement are, however, no longer reserved for minority and women-owned businesses. The Small Business Administration and the Department of Transportation procurement programs are for small disadvantaged business disadvantaged business enterprises, including minority and women-owned businesses. Accordingly, the terms "small disadvantaged business" and "disadvantaged business enterprises" are used in this section.

[233] Both 41 CFR 60-4.3(a)7.o and Part III.E of the Construction SCER provide related information.

3J INTERVIEWS

Conducting interviews is the fourth activity in a construction on-site review. Interviews typically take place during the CO's worksite inspection of the contractor's federal and nonfederal projects. COs should prepare interview outlines and/or questions in advance of the on-site, referencing FCCM 2F, Interviews. COs should conduct sufficient interviews of employees and supervisors to resolve any outstanding issues or questions. This includes interviewing these key groups:

- Supervisors, to determine if they are aware of and adhere to the affirmative action specifications. Supervisory personnel are often the individuals to whom applicants speak concerning employment opportunities, and they are likely to make job and overtime assignments;
- Current employees (nonminority males, as well as minorities and women);
- Union officials, if applicable;
- Applicants (nonminority males, as well as minorities and women); and
- Former employees (nonminority males, minorities and women) to determine how the contractor and co-workers treated them on the job.

If the contractor has only a few women or minorities in its construction workforce, COs will make every effort to interview each one. If all the women and minority employees cannot be interviewed, COs should select a representative sampling from each trade for interview. These interviews should probe for any evidence of discrimination, including harassment, and other indicators of noncompliance.

COs will refer any complaints received from employees during these interviews related to the Davis-Bacon Act wage rates to the DOL's WHD.

3K PHYSICAL INSPECTION OF CONTRACTOR WORKSITES

The purpose of conducting an inspection of worksites is to obtain additional information regarding the contractor's compliance with the requirements, including requirements that must be implemented at such sites (*e.g.,* posting of policy, EEO poster). In addition, a CO can document the type of work performed, the conditions under which it is performed and the makeup of the workforce performing that work, through the on-site inspection.

The CO should inspect at least one federal or federally assisted construction worksite that is related to the construction contract as a part of the compliance review and, whenever possible, nonfederally involved worksites should be inspected as well. COs must include information on the worksites inspected (*e.g.,* project name, location, and funding) in Part IV of the Construction SCER.

3K00 INVESTIGATION OF COMPLIANCE

a. *Equal Opportunity Clause and Other Requirements.* The CO should review bulletin boards maintained on-site to ensure that the contractor's EEO policy is posted and that the required notices at 41 CFR 60-1.35(c) and 41 CFR 60-1.42 are also posted.[234] For contractors subject to the VEVRAA and Section 503 AAP requirements of 41 CFR 60-300 and 41 CFR 60-741, the CO should determine whether notice of the location and hours of availability of the written AAP(s) are also posted.[235]

b. *Working Conditions*. The CO should review working conditions to determine whether there is evidence of harassment, intimidation or coercion, for example, a substantial difference in the conditions available to women or minorities. When feasible, at least two women should be assigned to the project(s). Also ensure that all facilities are nonsegregated, and that, where appropriate, the contractor provided separate or single-user toilet and changing facilities to ensure privacy between the sexes.

3K01 COMPLIANCE WITH EXECUTIVE ORDER 13496

Pursuant to Executive Order 13496 and its implementing regulations, 29 CFR Part 471, federal contractors and subcontractors (but not federally assisted construction contractors) must notify employees about their rights under the NLRA. Contractors with covered contracts must meet their obligations under Executive Order 13496.[236]

Executive Order 13496 requires that covered contractors post notices specifying employee rights under the NLRA. The NLRA guarantees employees the right to organize and bargain collectively with their employer, and to be free from retaliation for so doing. Contractors must post the notice conspicuously in and around their establishments, worksites and offices so that it is prominent and employees who are covered by the NLRA and directly or indirectly (*e.g.,* maintenance, repair, personnel, payroll work) engaged in contract-related activity can readily see it. COs must inspect employee bulletin boards and areas frequented by applicants and employees, such as break rooms, personnel offices and common areas, for the required poster. If the contractor customarily posts employee notices regarding the terms and conditions of employment electronically, then the contractor must also post the Executive Order 13496 notice electronically. COs must verify the contractor's compliance.

Executive Order 13496 also requires that covered contractors ensure that each subcontract and purchase order related to their federal contract(s) contains a notice of this posting obligation. COs must review a sampling of subcontracts and purchase orders to ensure that a covered contractor complies with this requirement.

---

[234] Required notices include the Pay Transparency Nondiscrimination Provision, Equal Employment Opportunity is the Law poster and any required poster supplements. If the Pay Transparency Nondiscrimination Provision is not physically posted, it must be posted electronically.

[235] See 41 CFR 60-300.41, and 41 CFR 60-741.41.

[236] See OFCCP Directive 2010-01, "Verification Procedures under E.O. 13496, Notification of Employee Rights under Federal Labor Laws, and the Department of Labor's Implementing Regulations at 29 C.F.R. Part 471."

There are exceptions to the posting requirements so COs must consult with the RSOL, their supervisors or the national office if there are questions about coverage under Executive Order 13496.[237] If a violation of Executive Order 13496 is not corrected, the Director of OFCCP, or a designee, refers the matter to the Director of OLMS, who may take enforcement action, as appropriate, under 29 CFR 471.13.

3L COMPLIANCE WITH SEX DISCRIMINATION REGULATIONS

All construction contractors, whether involved in federal or federally assisted construction work, must be able to demonstrate compliance with 41 CFR Part 60-20, *Discrimination Based on Sex*. COs will refer to FCCM Chapters 2 and 6, as appropriate, for procedures to follow in reviewing for compliance with these regulations. The contractor's compliance with these regulations must be described in Section III.F. of the Construction SCER.

3M COMPLIANCE WITH RELIGION AND NATIONAL ORIGIN GUIDELINES

All construction contractors, whether involved in federal or federally assisted construction work, must be able to demonstrate compliance with 41 CFR Part 60-50, *Guidelines on Religion and National Origin*. The CO will refer to Chapter 2 for procedures to follow in reviewing for compliance with these requirements; they must describe the contractor's compliance with these guidelines in Section III.G. of the Construction SCER.

3N COMPLIANCE WITH VEVRAA AND SECTION 503

Construction contractors with a covered federal contract or subcontract must comply with the requirements of Section 503 and VEVRAA and their implementing regulations.[238]

The general requirements of these regulations require that federal contractors not discriminate based on protected veteran status or disability. Contractors must provide needed reasonable accommodations to the known physical and mental limitations of qualified individuals with disabilities unless the accommodation would cause an undue hardship. In addition, federal contractors must engage in affirmative action to employ and advance in employment protected veterans and qualified individuals with disabilities. Among other obligations, covered federal contractors must post required notifications for employees and applicants, notify each labor organization with which it has a collective bargaining agreement, incorporate the equal opportunity clauses into subcontracts and include the tag line in all job advertisements.[239] A few

---

[237] See Executive Order 13496 Frequently Asked Questions, *http://www.dol.gov/ofccp/regs/compliance/EO13496_faqs.htm* (last accessed Sept. 11, 2019).

[238] 41 CFR Part 60-300 and 41 CFR Part 60-741. OFCCP maintains current thresholds for covered contractors at *https://www.dol.gov/ofccp/taguides/jurisdiction.htm*.

[239] See 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a).

examples of acceptable combined job advertisement tag lines are "Equal Opportunity Employer – disability and vet," and "EOE including disability and vet."[240] Federal contractors covered by VEVRAA must also list employment openings with the appropriate ESDS where the opening occurs.

Under VEVRAA, covered federal contractors with 50 or more employees must invite applicants to self-identify as a protected veteran at both the pre-offer stage of employment and at the post-offer stage. Additionally, they must develop a written VEVRAA AAP. The AAP includes a policy statement, review of personnel processes, review of physical and mental job qualifications, reasonable accommodation to physical and mental limitations, procedures to prevent harassment, external and internal dissemination of policy, outreach and positive recruitment, an audit and reporting system, designation of responsibility for implementation, training, data collection and analysis, and establishment of a hiring benchmark. Federal contractors are required to make the AAP, absent the data metrics required by 41 CFR 60-300.44(k), available to applicants and employees, and post notice of the availability.[241] COs will analyze the AAP, following the guidance in FCCM 1H and FCCM 2I.

Under Section 503, covered federal contractors with 50 or more employees must invite applicants and employees to self-identify as a person with a disability using the OMB-approved "Voluntary Self-Identification of Disability form" (Form CC-305). Federal contractors must offer the form to applicants at pre-offer and post-offer stages of employment. Federal contractors must also offer the form to employees in the first year the contractor becomes subject to the self-identification requirement and at five-year intervals thereafter. In addition, they must remind their employees at least once during the years between invitations that employees may voluntarily update their disability status. Covered federal contractors with 50 or more employees must also develop a written Section 503 AAP. The AAP includes a policy statement, review of personnel processes, review of physical and mental job qualifications, reasonable accommodation to physical and mental limitations, procedures to prevent harassment, external and internal dissemination of policy, outreach and positive recruitment, an audit and reporting system, designation of responsibility for implementation, training, data collection and analysis, and a utilization goal and analysis. Federal contractors are required to make the AAP, absent the data metrics required by 41 CFR 60-741.44(k), available to applicants and employees, and to post notice of the AAP's availability.[242] CO's will analyze the AAP, following the guidance in FCCM 1G and FCCM 2H.

COs must describe in detail the federal contractor's compliance with VEVRAA and Section 503 implementing regulations in Section III.H. of the Construction SCER.

---

[240] For a contractor covered by Section 503, VEVRAA and EO 11246, an example of an acceptable combined tag line may be "EOE race/color/sex/sexual orientation/gender identity/disability/vet."

[241] 41 CFR 60-300.41

[242] 41 CFR 60-741.41

3O IDENTIFICATION AND RESOLUTION OF EMPLOYMENT DISCRIMINATION

The CO may identify potential individual or systemic discrimination during the compliance review. Chapter 2 of this Manual contains a detailed description of the procedures the CO should use for gathering and analyzing facts to determine whether employment discrimination exists. These procedures are directed primarily at supply and service compliance evaluations, but the CO may adapt them for use in construction compliance reviews. The theoretical bases for proving discrimination are equally applicable to employment discrimination identified in construction compliance reviews. Remedies for employment discrimination are also found in Chapter 7 of this Manual.

3P EXIT CONFERENCE

The exit conference is the final activity in an on-site review. Following the general guidelines outlined in FCCM 22D04, the CO should conduct an exit conference for the construction firm's CEO, or designee, at the conclusion of the on-site review. During this conference, the CO should:

- Outline the preliminary results of the review;
- Identify any violations and the corrective actions necessary to resolve the violations;
- Inform the contractor that it will receive a written notice summarizing the violations and remedies required; and
- Inform the contractor that he or she may resolve the violations with a CA.

If the contractor disputes the violation finding, the CO should assure the contractor that OFCCP will consider any pertinent additional evidence submitted within a specified time before determining its compliance status.

3Q STANDARD CONSTRUCTION COMPLIANCE EVALUATION REPORT

The Construction SCER is a tool used by COs to document the findings of the compliance evaluation. It also establishes a framework for conducting the on-site and documents the results of the evaluation. The current version of the Construction SCER is in Appendix A-6.

3Q00 PURPOSE AND CONTENT OF THE SCER

COs must use the Construction SCER when conducting a construction compliance evaluation to report compliance evaluation results. The Construction SCER aims to provide objective measures of a contractor's efforts to implement the required affirmative action obligations specified in the regulations. The CO uses the Construction SCER worksheets to specify:

- Whether a particular issue or problem needs analysis as an individual case or a systemic case; and
- Whether the particular issue or problem requires a disparate treatment analysis, a disparate impact analysis, or both.

The SCER includes a narrative summary of findings that should be organized as described below.

a. *Scope of Review*. The CO should briefly state those items covered in the pre-review, the on-site review and the project interviews.

b. *Analysis*. The CO must present an analysis of pertinent materials for each area examined including any indicators he or she identified from analyses of personnel activity and compensation. The CO must identify sources of information (*e.g.,* interviews conducted, records examined, worksites inspected and community contacts made). If a CO finds deficiencies, the explanation must be sufficient to permit a person who is unfamiliar with the case to understand the basis for each deficiency determination. The CO will also provide detailed narrative information on problem areas identified during the review of the contractor's below activities.

- Recruitment Practices;
- Training;
- EEO/AA Policy and Implementation;
- Personnel Operations and Leave Policies;
- Contracting Activity;
- Discrimination Violations;
- Implementation of Discrimination on the Basis of Sex regulations;[243]
- Implementation of Guidelines on Discrimination Because of Religious or National Origin;[244]
- Implementation of Section 503; and
- Implementation of VEVRAA.

c. *Conclusions*. The CO must make a final assessment of the findings and how these relate to the contractor's compliance status.

---

[243] 41 CFR Part 60-20.
[244] 41 CFR Part 60-50.

d. Resolution. If the CO identifies violations, the CO must describe the corrective action necessary to consider the contractor in compliance. Both parties must agree to specific corrective actions that the CO will include in a CA, as appropriate. Otherwise the CO must issue an SCN.[245]

e. Recommendations. The CO must recommend that the contractor be found either in apparent compliance or noncompliance. Evidence to support the CO's recommendation must be documented in the case file.

After concluding the on-site review, the CO must complete any required analyses of the data and other information that was gathered. The CO must investigate problem areas and issues until the case file contains sufficient evidence to establish whether discrimination did or did not occur. The case file should retain all evidence the CO obtained and documents the CO created, including any evidence that does not support the CO's conclusions.

3Q01 SUMMARY OF FINDINGS

After completing the compliance evaluation, including all on-site and off-site analyses of the information obtained and recorded in the Construction SCER, the CO must compile a summary of findings to include in the narrative summary of findings. This summary includes the findings of the case, the bases for the findings and the CO's recommendations. The summary of findings should also include the:

- Name and description of the facility;
- Problem area(s) identified, if applicable;
- Description of the selection or other process or practice examined (*e.g.,* for a hiring case, the steps in the application process);
- Results of any analyses conducted, such as IRAs, comparative (cohort) analysis, and regression analysis;
- Summary of any interviews conducted;
- Relevant anecdotal evidence obtained;
- Description of any violations and their bases;
- Recommended corrective actions, where the CO has identified violations; and
- Recommended next steps.

[245] 41 CFR 60-4.8.

The summary should logically lead to the CO's conclusion about whether or not a violation occurred. The CO submits the completed SCER to his or her supervisor for approval. The final SCER must be signed.

Depending upon the circumstances of a particular case, it may be a good practice to conduct a follow-up meeting or teleconference with the contractor. Below is an example of why this is a good practice.

- The CO held an exit conference with the contractor at the conclusion of the on-site review. However, following off-site analysis, the CO found additional issues that need to be discussed with the contractor. More specifically, at the conclusion of the on-site, the CO told the contractor that it would be cited for failing to track the race, ethnicity and gender of job applicants passing through various phases of the selection process. However, during off-site analysis, it became clear to the CO that the contractor also discriminated in its termination activity.

After advising the contractor of its compliance evaluation findings, the CO must provide formal notification through a PDN or NOV. COs use certified mail, return receipt requested, to provide this notice to the contractor. If requested by the contractor, a courtesy copy is sent by email or facsimile. We discuss the various forms of notice in more detail in Chapter 8, Resolution of Noncompliance.

If, prior to the issuance of the notice of compliance, the contractor provides new evidence, the CO must conduct any necessary investigation and analyses to determine if the new evidence changes any of the initial findings and to ensure that the final findings are fully supported. A basic part of any additional investigation is verifying the credibility of the new evidence.

3R NOTIFICATION OF COMPLIANCE REVIEW RESULTS AND RESOLUTION OF VIOLATIONS

When no violations are found, a CO prepares a letter of no apparent violations, to be issued and signed by the District Director.[246] However, when violations are found, a PDN or an NOV is prepared.[247] Both are issued and signed by the District Director.

The PDN includes full details of each deficiency and violation, including appropriate citations to the regulations and the needed corrective actions. Contractors may voluntarily resolve violations through a CA. See below for a discussion of this resolution document.

3S EXAMPLES OF COMMON VIOLATIONS

Below is a list of common violations that may be resolved in a CA, if possible:

---

[246] See Letter L-5 – Notice of Closing: Compliance Evaluation (No Violation Found).
[247] See FCCM Chapter 8 – Resolution of Noncompliance.

- *List of Recruitment Sources.* Failure to maintain a list of recruitment sources that includes recruitment sources for women and minorities, and failure to provide written notice to these sources and community organizations regarding job opportunities, and to maintain records of their responses.[248]

- *List of Applicants.* Failure to maintain a file of the names, addresses and telephone numbers of each walk-in applicant and union referral, identified by sex, race and ethnicity, and the actions the contractor took.[249]

- *Referrals to Unions.* If applicants are sent to a union for referral and not referred back or employed, failure to document results of this referral and any additional action taken.[250]

- *Impeding Affirmative Action Efforts.* Failure to notify OFCCP that a union is impeding the contractor's affirmative action efforts.[251]

- *Direction of Recruitment Efforts.* Failure to direct its recruitment to all demographic groups in the recruitment area, including women and minorities, community organizations, schools and training organizations.[252]

- *Training Programs.* Failure to develop on-the-job training opportunities and participate in training programs that expressly include minorities and women.[253]

- *Annual Review of Specifications.* Failure to review, at least annually, the obligations under the specifications with all employees having responsibility for employment decisions.[254]

- *Annual Review of Equal Opportunity/Affirmative Action Performance.* Failure to conduct an annual review of its supervisors' adherence to and performance under Equal Opportunity/Affirmative Action obligations.[255]

- *Annual Inventory.* The contractor's failure to conduct an annual inventory and evaluation of at least the currently employed women and minorities for promotional opportunities.[256]

- *Intimidation or Harassment.* Evidence of intimidation, harassment or coercion.[257]

---

[248] 41 CFR 60-4.3(a) paragraph 7, step b.
[249] 41 CFR 60-4.3(a) paragraph 7, step c.
[250] 41 CFR 60-4.3(a) paragraph 7, step c.
[251] 41 CFR 60-4.3(a) paragraph 7, step d.
[252] 41 CFR 60-4.3(a) paragraph 7, step i.
[253] 41 CFR 60-4.3(a) paragraph 7 step e.
[254] 41 CFR 60-4.3(a) paragraph 7, step g.
[255] 41 CFR 60-4.3(a) paragraph 7, step p.
[256] 41 CFR 60-4.3(a) paragraph 7, step l.
[257] 41 CFR 60-4.3(a) paragraph 7 step a.

- *Validation.* Failure to validate tests and other selection procedures when required under 41 CFR Part 60-3.[258]

- *Monitoring Personnel Activities.* Failure to monitor all personnel and employment activities to ensure they do not have a discriminatory effect.[259]

- *Segregated Facilities.* Evidence of segregated facilities except where separate facilities are necessary to provide privacy between sexes.[260]

- *Discrimination.* All investigations in which there is evidence of employment discrimination.

3T REVIEW COMPLETION LETTER

Letter L-5 provides a format for a Notice of Review Completion for the CO to use when he or she finds no violations. When the CO finds a violation, the CO refers to the sample letters that are in Chapter 8. OFCCP uses Letter L-40 or Letter L-41 when major violations were voluntarily resolved in a CA. If OFCCP issued an SCN the CO should use Letter L-40. If no SCN was issued, use Letter L-41.

3U REFERRAL FOR ENFORCEMENT

If the contractor and OFCCP cannot resolve the violations through a CA, OFCCP will issue an SCN[261] and will recommend the case for enforcement, where appropriate.

---

[258] 41 CFR 60- 4.3(a) paragraph 7, step k.
[259] 41 CFR 60-4.3(a) paragraph 7, step m.
[260] 41 CFR 60-4.3(a) paragraph 7, step n.
[261] 41 CFR 60-4.8.

CHAPTER 4
CORPORATE MANAGEMENT COMPLIANCE EVALUATIONS

4A INTRODUCTION

This chapter outlines the procedures for COs conducting CMCEs of multi-establishment contractors[262] subject to Executive Order 11246, as amended, Section 503, as amended, and VEVRAA, as amended. The CMCE includes all aspects of a standard compliance evaluation but focuses predominantly on the corporate headquarters. It is important to note that OFCCP can "request relevant data from any and all areas within the corporation to ensure compliance with Executive Order 11246."[263] In addition, the CMCE specifically evaluates a contractor's selection, development and retention practices that affect advancement into middle and senior-level corporate management.

4A00 PURPOSE OF CMCEs

The purpose of a CMCE, as described at 41 CFR 60-2.30(a), is to determine whether individuals are encountering artificial barriers to advancement into middle and senior-level corporate management. During CMCEs, COs pay special attention to components of a contractor's employment process that affect advancement or promotion into middle and senior-level positions.

As in other compliance evaluations, the CMCE focuses on a contractor's efforts to ensure a discrimination-free workplace. To ensure a thorough analysis of EEO compliance, CMCEs focus not only on personnel activity data at the corporate headquarters, but also on affirmative action policies and procedures that ensure EEO leading to advancement throughout the organization.

Therefore, during a CMCE COs begin their analysis of middle and senior-level management positions by focusing on two areas:

- Potential discrimination; and
- Affirmative action.

a. Potential Discrimination. When focusing on the potential for discrimination, COs are typically seeking answers to two questions:

- Does unlawful discrimination exist in the selection processes and practices for middle and senior-level management positions?

[262] Unless otherwise noted, the term "contractor" includes subcontractors.
[263] 41 CFR 60-2.30(b).

- Does unlawful discrimination exist in employee performance review procedures or in employee developmental assignments?

In addition to these questions, COs are also seeking to determine whether individuals currently in these positions are treated in a nondiscriminatory manner in all aspects of their employment, including assignments, total compensation, development opportunities, reasonable accommodation and any other benefits or privileges associated with their positions.

b. *Affirmative Action*. The obligation to ensure EEO extends to all levels of a contractor's activities, including the recruitment, development and selection processes for middle and senior-level management positions. The contractor's efforts are particularly important when evaluating higher-level positions. This is so because the selection criteria for these positions often become more subjective. Moreover, the selection criteria at these levels are closely related to corporate culture and values. COs, therefore, must evaluate whether and to what extent the contractor:

- Examines its development and selection criteria and practices for middle and senior-level management positions;
- Identifies EEO problems or potential barriers to equal opportunity; and
- Devises and implements effective strategies to address identified problems within the context of its own particular corporate environment.

4A01 SCOPE OF CMCE

A CMCE is always a full review. COs use the SCER, with the addition of the CMCE-specific Part D which addresses those elements unique to a CMCE.[264] The evaluation of a corporate headquarters includes a review of the written AAPs to ensure that they include all jobs for which the headquarters has decision-making authority, regardless of where those jobs are physically located. For example, jobs for which the corporate headquarters retains decision making or approval and disapproval authority usually include senior managers of the various corporation establishments. Such jobs are often important contributors to feeder pools for middle and senior-level corporate management positions.

Corporate wide policies will also be examined as part of the CMCE, including those pertaining to protected veterans with disabilities, individuals with disabilities, and the sharing of compensation information. A CMCE can be expanded beyond the corporate headquarters if, during the course of the CMCE, the CO becomes aware that problems exist at establishments outside the corporate headquarters.[265] In this instance, the CO should discuss with his or her supervisor[266] whether it would be appropriate to expand the compliance evaluation beyond the headquarters. If they decide to expand the evaluation, the CO should contact the contractor,

---

[264] FCCM 4B – Pre-Desk Audit Actions.
[265] 41 CFR 60-2.30(b).
[266] The regional and national offices are consulted when determining whether to expand the scope of a CMCE.

explain the reasons for and scope of the expansion, and request appropriate records and other evidence regarding the additional issues(s) to be investigated.

For example, the CMCE may need to include an analysis of feeder pools at subordinate establishments. In determining whether to include such an analysis, the CO should consider the degree to which the contractor has historically and recently filled corporate headquarters management positions from elsewhere in the corporation, and the degree to which corporate headquarters tracks and monitors the progress of key personnel in subordinate establishments. COs should refer to FCCM 4H04, Cross-Establishment Movement, for additional information on feeder pools and related issues.

Likewise, the highest-level management positions held by members of nonfavored groups may be outside the corporate headquarters. Therefore, when doing a CMCE, the CO must request data from the contractor related to other establishments, when necessary, to determine the existence and extent of a "glass ceiling" within the corporation.

4A02 CONFIDENTIALITY

Some of the data examined during a CMCE, such as human resource development plans and total compensation packages for higher management levels, may be considered particularly sensitive by the contractor. COs must consult with the appropriate OFCCP managing officials to ensure that the appropriate steps are taken to ensure confidentiality of these data. In many cases, this will include consultation with the District Director.

If the contractor's representatives express concerns about confidentiality, the CO must advise the representative that OFCCP is required to "treat information obtained in the compliance evaluation as confidential to the maximum extent the information is exempt from public disclosure under the FOIA, 5 U.S.C. 552."[267] Exemption 4 of the FOIA at 5 U.S.C. 552 (b)(4) protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." DOL's FOIA regulations require OFCCP to notify the contractor of a FOIA request for confidential business information to give the contractor an opportunity to object to the disclosure under exemption 4.[268] When submitting data and records to OFCCP, contractors should clearly identify all trade secrets and commercial or financial information it believes are exempt from disclosure. Moreover, the CO may advise the contractor that, under the Trade Secrets Act, 18 U.S.C. 1905, it is a criminal offense for a government employee to release trade secrets and other forms of confidential commercial and financial information to another business or to the public unless the law authorizes such disclosure.

Other information may be exempt from disclosure, *e.g.,* personnel files under Exemption 6 of the FOIA.[269] For additional information regarding the agency's treatment of confidential information, review 41 CFR 60-1.20(f) and 41 CFR 60-1.20(g).

---

[267] 41 CFR 60-1.20(g).
[268] 29 CFR 70.26.
[269] 29 CFR Part 70.

4B PRE-DESK AUDIT ACTIONS

Although several steps of the CMCE are common to all reviews, the actual execution and information gathering are unique to a CMCE. The Supply and Service Scheduling Letter, with the attached Itemized Listing, is used to notify the contractor of the evaluation. The Scheduling Letter should include the name and telephone number of the CO receiving the AAPs and supporting data or the appropriate supervisor if the supervisor is receiving this information.

This discussion is focused on providing notice of a CMCE. The following subsections review other matters related to preparing for the desk audit.

4B00 FOLLOW-UP CONTACT WITH CONTRACTOR

Generally, within 15 calendar days after the Scheduling Letter is sent, COs must contact the contractor's head of human resources to inform him or her that the compliance evaluation will be a CMCE and to explain what is involved in the evaluation. In addition, this initial contact should include:

- The identification of the CO who will be involved in the evaluation;
- The establishment of the lines of communication between the contractor and OFCCP;
- The answers to any questions the contractor may have about the information OFCCP requested in the Scheduling Letter; and
- The answers to any questions regarding the differences between a standard compliance evaluation and a CMCE.

COs should offer any technical assistance the contractor needs to ensure the efficient and effective completion of the evaluation. This may include advising the contractor of its recordkeeping requirements during the course of the evaluation.

4B01 CORPORATION BACKGROUND RESEARCH

Before starting the evaluation, the CO should gather appropriate background information about the corporation he or she will evaluate. Using an array of data sources, including the Internet, the CO should try to learn as much as possible about the corporation's operations, personnel procedures and EEO compliance history in order to facilitate the process of the CMCE. Other important information that may impact the evaluation includes the history of the corporation and its product/service line(s), the corporate leadership and business trends (with specific focus on how that may impact corporate employment).

4B02 SEARCH FOR PUBLISHED REPORTS

COs should learn as much about the contractor and its industry as possible. There are several resources available but only a few are listed below.

- Industry resources such as Hoover's, Standard and Poor's, and Moody's provide comprehensive industry information, company profiles, key contact data, financial research and analysis, and news.

- Publications such as the "International Directory of Company Histories" and the "Reference Book of Corporate Managements" are sources of information on corporate histories and the backgrounds, executive leadership, labor and management actions, NAICS codes, key dates, ticker symbol, principal subsidiaries, principal divisions, principal operating units, principle competitors and other significant milestones.

- Articles on the corporation within the past two years in business oriented newspapers and periodicals such as *The Wall Street Journal*, and *Forbes* and *Fortune* magazines.

- Corporate websites may contain the most current information regarding the changes in corporate management or other pertinent information.

- Public records, including court documents on discrimination lawsuits, settlements and findings.

FCCM 4B11, Evaluation and Analysis of Corporate Information, provides details on how to use this and other research information. If a CO does not have ready access to this or other research materials, he or she may email a Request for Literature Search to the DOL Library at library@dol.gov or call the library for assistance at (202) 693-6600.

4B03 RETRIEVAL OF "FORM 10-K" REPORTS

In addition to the publication search, COs must retrieve the latest "Form 10-K" for corporations that are required to file. The Securities and Exchange Commission (SEC) requires all publicly held corporations to file a "Form 10-K" report annually. Domestic corporations must make their filings on EDGAR, SEC's Electronic Data Gathering, Analysis and Retrieval system.

Filings maintained on EDGAR are found at the web address listed below.

http://www.sec.gov/edgar/searchedgar/webusers.htm (last accessed Sept. 2015)

Use of this information is discussed in FCCM 4B11, Evaluation and Analysis of Corporate Information.

4B04 RETRIEVAL OF EEO-1 REPORTS

As discussed elsewhere in the Manual, EEO-1 reports are required of all private employers who are:

- Subject to Title VII, as amended, and have 100 or more employees excluding state and local governments, primary and secondary school systems, institutions of higher education, Indian tribes and tax-exempt private membership clubs other than labor organizations; or

- Subject to Title VII and have fewer than 100 employees if the company is owned by or affiliated with another company, or there is centralized ownership, control or management so that the group legally constitutes a single enterprise, and the entire enterprise employs a total of 100 or more employees.

All federal contractors who are private employers file the report if they are not exempt under 41 CFR 60-1.5, have 50 or more employees,[270] and:

- Are prime contractors or first-tier subcontractors, and have a contract, subcontract or purchase order amounting to $50,000 or more; or

- Serve as a depository of Government funds in any amount; or

- Are financial institutions that are issuing and paying agents for U.S. Savings Bonds and Notes.

The filing deadline is set by EEOC and is generally in September each year. Only those establishments located in the District of Columbia and the 50 states are required to submit an EEO-1. No reports are filed for establishments in Puerto Rico, the Virgin Islands or other U.S. Territories.

COs must retrieve a contractor's two most recent EEO-1 reports from the Equal Employment Data System (EEDS). The EEDS is designed to provide information annually on the EEO characteristics of supply and service contractors and other employers. The system contains five years of EEO-1 data. The EEO-1 report includes the three report types below detailing various aspects of multi-establishment corporations.[271]

- *Type 2 report.* A consolidated report that covers all employees corporate-wide, including those at headquarters and those in establishments too small to require a separate establishment report.

- *Type 3 report.* A headquarters report covering employees at the corporate headquarters location.

- *Type 4 report*. A separate report for each establishment employing 50 or more people.

---

[270] With the September 29, 2016 modification of the EEO-1 Report form to include the collection of compensation information, all private employers with l00 or more employees will report summary pay data, including hours worked, by sex and ethnicity or race, by EEO-1 job category. As of the publication of this 2019 version of the FCCM, the first employer compensation data reporting must occur by September 30, 2019. Federal contractors and subcontractors with 50-99 employees and other private employers with 100 or more employees will continue to report the number of individuals they employ by job category and by sex and ethnicity or race, consistent with established practice.

[271] A single-establishment company is required to submit only one EEO-1 data report - a Type 1 EEO-1 Report.

FCCM 4B12, Evaluation of EEO-1 Reports, reviews the possible uses of this information. If the EEO-1 information is not available through the EEDS system, a CO should request this data from the contractor directly.

4B05 OFCCP COMPLIANCE HISTORY REPORTS

The CO must check the electronic CMS and EIS to obtain a list of prior compliance evaluations of the contractor's corporate headquarters and other establishments, and to identify any issues in the reviews. This may be useful for identifying information that the CO should obtain or examine during the on-site review. If this task was a part of a previous related desk audit, the CO should review this information as part of the preparation for the on-site. If a CA was obtained in a prior review, the on-site review should provide an opportunity to confirm that the contractor took and appropriately maintained the corrective action. FCCM 5B03, OFCCP Compliance History Reports, reviews the use of this information.

4B06 CONTACTING EEOC, VETS AND OTHER AGENCIES

Before starting the evaluation, a CO must also seek information regarding the employment policies and practices of the contractor from the EEOC, VETS and other EEO and labor law enforcement agencies. This information provides the CO with a better understanding of the contractor's workforce and operations, and may indicate potential problem areas.

a. *EEOC and State and Local FEP Agencies*. Simultaneous with the sending of the Scheduling Letter, a CO must send the standard inquiry letter to the appropriate district office of the EEOC, and to the appropriate state and local FEP agencies.[272] This letter requests information regarding discrimination complaints filed against the contractor and any other information that may be pertinent to assess the contractor's EEO posture. After 15 calendar days, the CO will follow-up by telephone with any agency that failed to reply or from which the CO needs additional information.

b. *VETS, ESDS, and DOL Enforcement Agencies*. The CO must also check the VETS-4212 database and contact the VETS regional office, and the appropriate local ESDS to request any information that could be pertinent to the pending review.[273] Additionally, the CO must check the DOL Enforcement Database for closed complaints and compliance evaluations of the contractor's establishments, as well as contact other DOL enforcement agencies, such as OSHA and the WHD to identify the number, types and status of any complaints that have been filed against the contractor.

4B07 FOLLOW-UP AND USE OF INFORMATION ON COMPLAINTS FILED WITH OR BY OTHER AGENCIES

A CO must examine all the information regarding complaints against the contractor that he or she receives from federal, state and local agencies in response to the standard inquiry letter and

---

[272] Letter L-2 – Sample Inquiry Letter for Requesting Complaint Data from EEOC and State and local FEPs.

[273] Sample letters are in this Manual, including Letter L-3, Sample Letter For Requesting Job Listing From Employment Service Delivery Systems, and L-4, Sample Inquiry Letter for Requesting Information on Pending Review from Veterans Employment and Training Service.

enter the information on the SCER. Any complaints involving management jobs or "glass ceiling" issues should also be addressed in the SCER.

If the response does not provide enough information to determine whether a complaint involves a management job or "glass ceiling" issue, the CO should contact the responding agency for additional information.

When needed, the CO should contact the appropriate EEOC office or state or local fair employment practices agency to arrange to review relevant discrimination complaint files as part of the compliance evaluation. This action can be particularly useful when, as a result of the desk audit, the CO identifies potential systemic problems in complaint areas.

After receiving the AAPs and supporting data, any information the contractor provided with respect to current or past complaints must be compared with the information received from the agencies. The CO will note discrepancies and information that the contractor did not provide for possible further investigation during the review, if warranted. The contractor should be asked to explain discrepancies and to provide additional information. In conducting the desk audit, the CO should pay particular attention to any indication of a potentially broader problem in the type of activity and management area/level that was an issue in previous complaints.

4B08 RELATIONSHIP OF OFCCP COMPLIANCE ACTIVITIES TO EEO LITIGATION OR COURT ORDERS

If, during the conduct of a compliance evaluation, a CO finds that the contractor is involved in litigation or is under a court order for EEO matters, he or she should identify the EEO issues involved, the court, the parties, the case name and number and bring the matter to the attention of his or her supervisor. The field office, in consultation with the RSOL, will determine whether the litigation or court order should impose any limitations on the conduct of the compliance evaluation.

4B09 REVIEW OF COMMUNITY RESOURCE FILES

If a CO is not knowledgeable about the local organizations in the area in which the corporate headquarters is located, he or she should review the field office's community resource files to become familiar with local community groups, and introduce himself or herself to the various organizations. If the corporate headquarters is located near an Indian reservation, the CO should contact OFCCP's INAERP to discuss recommendations for contractor outreach and recruitment. Chapter 2 discusses how COs can establish relationships with local organizations representing members of covered groups.[274]

4B10 REVIEW OF PAST OFCCP COMPLIANCE ACTIONS

Based upon the information gathered in FCCM 4B, Pre-Desk Audit Actions, the CO should review the contractor's compliance history to identify cases with violations involving a corporate-wide policy or practice. Examples would be violations for prior discriminatory acts,

[274] See Chapter 2K – Linkage Agreements.

failure to conduct a self-audit, discriminatory benefits or testing practices, or unlawful medical screening practices. As appropriate, a CO can contact the OFCCP office that conducted the evaluation or investigation to obtain further information on the violations, their resolution and whether they applied to management jobs. The purpose of obtaining this information is not to revisit closed compliance actions, but to determine whether the same problem could exist corporate-wide. If the information indicates a potentially corporate-wide problem, especially one that could affect management jobs, the CO should include a review of that area in the On-site Plan.

4B11 EVALUATION AND ANALYSIS OF CORPORATE INFORMATION

After conducting research on the contractor as described in subsections 4B01 through 4B10 and receiving the results, COs must sort and analyze the material. Particular emphasis should be given to areas that could be relevant to the evaluation. For example, a recent acquisition or merger could have significant impact on feeder pools for management positions. While reviewing and sorting the data, COs should place the information into one of three categories:

- Corporate Organization;
- Corporate History and Trends; or
- Backgrounds of Top Corporate Officials.

The scope and purpose of each of these categories are described below.

a. *Corporate Organization*. This category includes information related to the organization of the entire corporation, rather than just the corporate headquarters facility. If a contractor uses an Organizational Display, as described at 41 CFR 60-2.11(b), as part of its AAP, COs should be able to compare the Organizational Display to the current corporate organizational chart. Industry directories and handbooks can provide an overview of this information, with detail often provided in the corporation's Annual Report and portions of its "10-K" filed with the SEC. Information and data related to the below questions will normally be in this category.

- What are the corporation's major components or businesses, groups and divisions; and its subsidiaries, both domestic and foreign?
- What are the components' major functions and/or products?
- Where are the corporation's major components located?
- What percentage of total corporate personnel does each component employ (*e.g.,* the ADC Products Group accounts for about 40% of total corporate personnel)?

This information will be helpful in identifying such factors as potential feeder pools for rotational assignments and headquarters management jobs. Also, information on the corporate

organization will help OFCCP determine the degree to which willingness to relocate may impact advancement.

After receiving the contractor's desk audit submission, COs will compare the corporate structure, as shown in this information, with that shown in any published corporate organization charts.

b. *Corporate History and Recent Trends*. There are several sources for this information, including industry directories and handbooks, particularly Hoover's Directories, at www.hoovers.com; specialized publications such as the "International Directory of Company Histories;" annual corporate reports and SEC submissions; newspapers and periodicals; and the corporation's website. COs should review these and other appropriate resources to gather information that answers these and other relevant questions.

- When was the corporation founded?
- What was its initial primary business? How has this changed over time?
- Has the corporation undergone a recent merger or acquisition?
- What are its most and least profitable components over the last several years?
- Has the corporation recently undergone, or is it projecting, substantial growth or cutbacks in particular areas of its business? If so, what are they?
- Has the corporation recently been awarded or lost major contracts? What business area(s) did the award or loss affect and how?
- What are its long-range projections for areas of business growth?

This information is relevant to a preliminary understanding of the business and economic context within which the corporation operates, and also will assist in evaluating particular corporate management issues. For example, recent mergers or major acquisitions may have caused a substantial change in the overall business mix of the corporation and in top management. Such changes may correspondingly impact corporate culture, and the skills mix that the corporation seeks in middle and senior-level management staff.

Sources of current profitability usually influence allocation of bonus pools among different business components and often indicate where growth in management opportunities is likely to occur.

c. *Background of Top Officials*. The corporation's website, annual report, Form 10-K or other sources, such as the "Reference Book of Corporate Managements," may provide information on the backgrounds of top corporate officials. This information usually includes education, background, time with the corporation and the positions held.

Such information can help verify past corporate practices like the degree to which the contractor traditionally filled top positions internally versus externally. It also may help identify shifts in the type of background that top management may value like differences in

the backgrounds, experiences, educational fields and/or levels of more recent entries to top management versus others.

The CO should summarize the information in the appropriate section in the SCER.

4B12 EVALUATION OF EEO-1 REPORTS

EEO-1 reports are valuable sources of information on changes in the workforce. Therefore, COs must review the total corporate-wide employment shown in the latest consolidated (Type 2) EEO-1 report. A CO should compare this with the corporate-wide employment in the preceding consolidated report to determine whether total employment is stable, growing or declining. This review also helps determine which EEO-1 categories have changed the most.

COs should use the corporate headquarters EEO-1 reports, *i.e.*, the Type 3 reports, to conduct EEO trend analyses on the direction of headquarters employment generally, and by EEO-1 category, including changes in groups determined to be unfavored through other analyses.

Comparisons of the participation of nonfavored groups in the two Officials and Managers (O&M) categories and the Professional category on the Type 3 report, with their representation in the same categories on the Type 2 report, should also be conducted by COs.

COs should review the latest individual establishment reports to identify major facility locations. A major facility is one that contains 150 or more employees, or in the case of smaller corporations where no individual facility reaches the 150 employees mark, a facility where the number of employees is at least 33% higher than the average of all facilities. COs will compare the participation of nonfavored group members in the two O&M categories and the Professional category on the headquarters' Type 3 report, with their representation in the same categories on the individual Type 4 reports, for the selected establishments. The COs will also compare individual establishments and note any significant differences in the participation of members of nonfavored groups in specific categories between establishments, as well as within a given establishment from one year to the next.

COs should discuss any areas of potential concern or interest resulting from these analyses in the appropriate section of the SCER.

4C RELATIONSHIP TO THE STANDARD DESK AUDIT

After receiving the contractor's corporate headquarters facility AAPs, COs should review and analyze the AAPs and their Itemized Listing data using the desk audit procedures outlined in Chapter 1. If the contractor does not provide AAPs and/or Itemized Listing data on time, COs should follow the procedures outlined in FCCM 1C. However, in addition to the standard desk audit, the primary focus in a CMCE desk audit is analyzing professional and management level job groups to identify any nonfavored groups, determine their representation, and assess the impact of policies and procedures on these groups. For example, COs must assess or determine:

- Whether there is a level(s) at which there is a marked decline in participation; and

- If there is such a level(s) of decline, the types of jobs at that level(s), both generally and by major functional area (*e.g.,* vice-president, director, senior analyst, finance, legal, sales).

Consideration is also given to the types of jobs held by nonfavored group members below that level at which there is a marked decline in participation. Whether nonfavored group members are located in likely feeder pools for the upper level jobs should also be determined. For example, COs may find that women are concentrated in office and clerical job groups. Two other areas of interest include:

- The employee development and selection policies and practices regarding jobs at the level at which participation declines, and the jobs in their probable feeder pools; and

- The nature and amount of employment activity in job groups around that level.

The following sections discuss each of these considerations in detail. When conducting the analyses, it is important for the CO to remember that these considerations apply corporate-wide, not just to headquarters positions.

4D DESK AUDIT – REVIEW OF THE ORGANIZATIONAL PROFILE, JOB GROUP ANALYSIS AND UTILIZATION ANALYSIS

The CO should review these items to determine which, singly or in combination, will best provide the necessary data for the analyses described in FCCM 4D00 and FCCM 4D01 below.

In addition to addressing them under the appropriate regular areas of the SCER, the CO should also discuss results of the analyses conducted under this section in the "Focus Level and Areas" element of Part D of the SCER.

4D00 ANALYSIS OF NONFAVORED GROUPS' MANAGEMENT LEVEL PARTICIPATION

A CO should determine whether there is a marked decline in the participation of specific groups of individuals. This section covers conducting an analysis and determining the participation rates for nonfavored groups in top and middle management.

As a general rule, a corporation selected for a CMCE should be large enough to have job groups extending beyond the standard EEO-1 categories. Therefore, the top management level may be immediately evident from a scan of the job group analysis. When this is not the case, actual job titles, in conjunction with reporting relationship to the CEO, are usually reliable indicators of the top management level.

Typical titles at top levels include Executive Vice-President, Senior Vice-President, Comptroller, Chief Financial Officer and Vice-President. Reporting relationships are usually reflected in the corporation's organizational charts. The very top level consists of individuals reporting directly to the CEO; the second level consists of those individuals who report directly to the top-level

managers. While the number of reporting levels regarded as "top management" varies with the size and structure of the particular corporation, more than three levels down at the headquarters establishment is usually considered middle management. People at that middle corporate level may, in turn, be top management at subordinate establishments.

Middle management is different. Again, the job group analysis may be the easiest way of determining what positions large corporations classify as middle management. However, when that is not the case, salary may be a more reliable determinant than title. It may be best for COs to use salary level, range or grade as reflected in the workforce analysis or organizational display to identify where nonfavored group participation declines.

When management levels are still unclear, COs must obtain more information before proceeding by contacting corporate human resources and making a request for clarification. Assuming management levels are defined, COs would move to their analysis of nonfavored group participation at these levels.

a. *Analyzing Nonfavored Group Participation*. In addition to analyzing and utilizing the normal EEO trend data, COs must conduct a breakout analysis specifically of the O&M categories. COs should total the number of O&M jobs by grade, race, ethnicity, sex and disability status across department lines. In doing so, they must keep track of the departments in order to examine the functional distribution of jobs at a later stage. FCCM 4D01, Functional Areas, may be a useful supplement to this discussion.

b. *Identify Marked Decline*. COs must identify whether there is a level at which there is a marked decline in any group's participation. A marked decline is the highest level with proportionately fewer nonfavored group members than the level immediately below but, except in rare cases, not the level without any nonfavored group members. There may be a single level at which there is a marked decline for one or more nonfavored groups, or there may be multiple levels at which a marked decline exists for different groups (*e.g.,* there may be one level at which there is a marked decline of the participation of Hispanics, another level where there is a sharp decline in the participation of females, and a third at which there is a marked decline of individuals with disabilities). Marked declines also may differ by various functional areas.

   The determination that there is a marked decline in nonfavored group member management participation will focus further CMCE investigation in two areas:

   - At and above the grade or level where nonfavored group participation declines. At this level, the focus should be on whether the incumbent nonfavored group members are treated in a nondiscriminatory manner in all aspects of their employment.

   - Below the grade or level where nonfavored group participation declines. At this level, the focus will be on why nonfavored group members have not advanced further. Specifically, areas to explore or questions to ask are:

     - Whether unlawful discrimination kept group members from advancing beyond that grade, either because of discrimination in the selection practice itself or because of

discrimination in employee development practices, or in assignment to career paths or feeder pools for higher-graded positions.

- Whether the contractor identified and removed any impediments to EEO in selection procedures for higher-level positions. Such impediments might include management review procedures or contractor actions regarding formal or informal career paths and feeder pools.

4D01 ANALYSIS OF FUNCTIONAL AREAS

Functional analysis is essentially analyzing whether career paths and feeder pools are determined by participation in specific functional lines. Absences of a particular group, observed in EEO categories, can often be a direct result of a functional line progression that has barriers to employment at early stages of career development (*e.g.,* at a major aircraft manufacturing contractor, upper management may almost exclusively come from the engineering functions where there may traditionally have been fewer women). A functional analysis may also reveal more general issues, such as hiring/placement disparities into certain professional categories. To conduct the appropriate analyses COs must:

- Identify major functional areas;
- Identify absences and concentrations in functional areas of certain groups;
- Determine whether the major functional areas are "line" or "staff;"
- Identify feeder pools;
- Compare feeder pools to higher-level jobs; and
- Examine the disparity between nonfavored and favored groups.

a. Identify Major Functional Areas. COs should return to the workforce analysis or organizational display and review departmental data to determine "major functions."

What is a "major function" will vary within a given corporate structure. However, a major function is usually headed by a manager who has either a "direct" or "second level" reporting relationship to the CEO, and typically includes or covers several departments.

Common "major functions" at a corporate headquarters include: Finance (under a Comptroller or Chief Financial Officer), Legal (under a General Counsel or similar title), Personnel or Labor Relations (under a Vice President for Human Relations or similar title), and Marketing, Sales and Research.

b. Absence and Concentrations in Functional Areas. In each major functional area, COs should analyze participation in exempt jobs (managerial, professional and, as applicable, sales) to

determine if particular groups are excluded or concentrated.[275] They should also analyze exempt jobs in any other functional areas where members of one sex, race or ethnic group are absent, underrepresented or concentrated.

c. *"Line" versus "Staff."* COs must identify whether the major functional areas are "line" or "staff." A line area is one that directly contributes to the corporation's profitability and generally focuses on a specific area; a staff area is one that primarily supports line functions.

Line jobs will vary a great deal depending on the corporation's product or service, but will include jobs and functional areas that are essential to producing and selling the product or service.

For example, at a consumer products firm, manufacturing, marketing and sales would be major line functions; at a consulting firm, the consultants would be line jobs; and at a high-tech firm, research and engineering would be line functions. Staff functions typically include personnel, labor relations, purchasing, finance, legal and facilities management.

While line and staff jobs are often at the same base salary, line jobs are more likely to be eligible for significant bonuses making their total compensation considerably higher. Also, the corporation is generally more likely to have promoted top management from line positions, although it is not unusual for top managers to have experience in line and staff positions.

COs must analyze the proportion of line versus staff exempt jobs in the workforce, and determine whether there is a significant difference in the workforce composition of the line and staff functions. COs should note as an area requiring further investigation any concentration of a particular race, ethnicity or sex in staff functions. At the on-site review, the CO should then review personnel files and conduct interviews to ensure that the presence of any concentrated groups in staff positions, despite having education/experience pertinent to the corporation's line functions, is not resulting from "steering" either at or after hiring.[276] Similarly, COs should note any concentration of individuals with disabilities or protected veterans in staff functions, and ensure during the on-site review that such concentration is not the result of "steering" at or after hiring.

d. *Identification of Feeder Pools*. COs should examine the utilization analysis and the raw personnel activity data from the AAPs to determine the most likely feeder pools for the jobs at and above the grades/levels where participation by one or more nonfavored groups declines. However, it is important to remember that potential feeder pools are not necessarily limited to the headquarters workforce. Therefore, COs may need to request additional data.

The likely feeder pools are not limited to subordinate management jobs, but may include professional jobs and/or other positions at comparable exempt grades. Likewise, feeder pools are not necessarily restricted to the functional area in which a particular management

---

[275] Generally, exempt jobs are jobs or positions that are exempt from the minimum wage and overtime provisions of the Fair Labor Standards Act.

[276] See FCCM 4H – Onsite: Filling of Management Jobs.

job is located, but they are most often related to them. For example, it is generally more common for someone in finance to move to a financial management position than it is for someone in engineering to do so. Consequently, for desk audit purposes, in each major functional area, COs should identify the:

- Number of jobs by favored and nonfavored group members at and above the grades or levels where the participation of nonfavored group members declines; and
- Number of exempt jobs by favored and nonfavored group members below that level.

e. *Comparison of Feeder Pool to Higher-Level Jobs*. If clustering of members of one sex, race or ethnicity appears at lower grade levels, COs should try to determine whether:

- *Nonfavored Group Members Hold Jobs with More Limited Advancement Potential*. There are several areas of inquiry or questions that are useful for COs when examining limited advancement potential issues. For example, COs should seek to determine whether nonfavored group members are concentrated in functional areas that have fewer higher-graded jobs than those they hold. Are they underrepresented in functional areas with higher-graded jobs? If so, there may be a placement problem.
- *Nonfavored Group Members Hold Jobs with Advancement Potential, but Do Not Advance at a Rate Comparable with their Peers*. There are several areas of inquiry or questions that are useful for COs to pursue when examining this apparent disparity. For example, COs should seek to determine whether nonfavored groups are in functional areas that have a grade distribution comparable to that in other functional areas. If so, COs will need to investigate further to determine the reason why proportionally more nonfavored group members are in lower-graded jobs than their peers.

COs should also seek to determine whether the reason for the disparity is attributable to some legitimate nondiscriminatory factor such as developmental programs, performance appraisals, assignments or other factors that are related to promotions.

f. *Disproportion or Disparity*. As a general rule, COs should first examine the functional areas where there is the greatest disparity between the participation of nonfavored group members above the grade where nonfavored group member participation declines, as well as below the grade where nonfavored group member participation declines.

4E DESK AUDIT: AAP AND EMPLOYMENT ACTIVITY INFORMATION DURING A REVIEW OF SELECTION PROCESSES AND DEVELOPMENTAL PROGRAMS

COs must review the contractor's written AAPs to find information on the selection processes that may apply to positions above and below the grades/levels where participation by nonfavored groups declines. As an example, a CO would look for information on the contractor's promotion policy. If the policy is to limit management jobs to internal candidates, the corporation should also have policies and procedures for making these job openings known to potential internal

candidates within corporate headquarters and outside of headquarters. Other instances where policies may indicate a problem might include the absence of employee development programs that apply to positions above and below the grades/levels where nonfavored group member participation declines. The absence of outreach efforts designed to improve access to management positions for nonfavored group members could also be a problem.

COs must also use personnel activity data from the contractor's AAP to identify the employment activities that include jobs above and below the level where nonfavored group member participation declines. This is in addition to conducting analyses on employment activity data. The CO must identify the number of hires and applicants at, above and below the grade where nonfavored group member participation declines. Based on the available data, the CO will determine how jobs at and above that level are filled (*e.g.,* hired from the outside, or promoted or transferred from within). Proper analysis may require requesting additional data and gathering information during the on-site review. Useful information related to this section is in FCCM 4F, Notice of On-site Review and Follow-up Data Requests and FCCM 4H, On-site: Filling of Management Jobs.

Now the CO must next compare the number of hires, promotions and transfers at, above and below the grade where nonfavored group representation declines. The CO must also identify terminations of nonfavored group members above and below the grade where their participation declines.

Once this is complete, COs must address all areas of potential concern in the SCER.

4F NOTICE OF ON-SITE REVIEW AND FOLLOW-UP DATA REQUESTS

At the conclusion of a desk audit, COs should contact the contractor to schedule the on-site review and discuss any additional material they need for further analysis. The COs should include any unresolved issues identified during the desk audit in the SCER.

The CO will prepare a letter to the contractor reiterating that the evaluation is a CMCE, confirming the on-site date and listing any additional data needed. The notice will state that the on-site review will begin with an entrance conference to discuss those issues with the CEO or appropriately designated corporate officials.

The notification letter to the contractor should identify the additional information needed. When the needed information is regarding the jobs filled at or above the level where nonfavored group participation drops, the data requested should be sufficient to identify the specific jobs filled and how they were filled (*e.g.,* by hire, by promotion, by transfer). COs should note in the data request that if the contractor filled such jobs by promotion or transfer from subordinate establishments within the corporation, the contractor should identify the originating establishment. As pertinent, COs should request any other needed activity data (such as applicant flow and terminations) and general information (*e.g.,* jobs in subordinate establishments included in the corporate AAP).

The notification letter must also provide a high-level summary of any preliminary indicators of discrimination identified during the desk audit. COs should note in the letter, however, that the list is not exhaustive, nor does it limit the scope of OFCCP's authority to confirm compliance with other requirements or investigate other potential violations that it discovers during the course of the compliance review.

4G ON-SITE REVIEW

A CMCE on-site review follows the same process as the standard on-site review:

- Conduct entrance conference to discuss purpose of on-site review and areas of concern;
- Review of documents provided by the contractor and interviews with employees and management to eliminate, revise and confirm identified areas of concern;
- Identify additional information still needed for further review on areas remaining unresolved; and
- Conduct closing conference to address any unresolved areas of concern and discuss "next steps" in the evaluation process.

COs should review Chapter 2 for specific guidance on on-site reviews. One primary difference between the CMCE and standard on-site review is that a Regional Director may lead the opening and exit conferences in a CMCE on-site review. Another difference is that the main focus is on corporate management positions, though the scope may be broader than just the corporate headquarters facility.

4G00 ENTRANCE CONFERENCE

COs must coordinate the entrance conference with top corporate officials and with the appropriate OFCCP regional office. Coordination with the regional office gives the Regional Director, or designee, the opportunity to attend the meeting. During the entrance conference, COs must obtain any clarification needed from the corporate organization (*e.g.,* any organization charts not obtained to date) and any missing corporate background information the corporation may be able to provide (*e.g.,* annual reports) prior to the on-site review. For example, corporate officials should be asked to explain and provide any documentation regarding:

- What the contractor values in candidates for middle and senior-level management positions;[277] and
- Whether the contractor has developed any special EEO programs that it would like for OFCCP to consider as part of its corporate evaluation.

[277] See FCCM 4G01 – Corporate Culture and FCCM 4H00 – General Qualification Standards.

As in any other evaluation, COs should address any questions contractors have concerning the on-site and any other part of the evaluation process. COs must remind contractors that the on-site closing conference will be only an informal, preliminary discussion and that a formal exit conference will be scheduled when OFCCP is prepared to discuss evaluation findings, after having conducted off-site analysis.[278]

4G01 CORPORATE CULTURE

Each corporation has distinct characteristics, not only in terms of how it conducts its major business and the skill backgrounds it needs, but also in terms of its management style and the behaviors it tends to foster and reward among its employees. The CO should gather information that indicates or describes the contractor's corporate culture. This information may help the CO understand how the corporation makes management selection decisions. While some of this information may be found through research, including corporate self-descriptions, a CO will usually get a better picture during the on-site review, including through interviews and observations made while visiting on-site.

a. *Corporate Business*. The nature of a corporation's business will tend to determine which corporate components are most essential to its profitability. For example, at a corporation that produces a fairly simple consumer product, marketing and sales are likely to be most central to profitability. On the other hand, in a corporation engaged in advanced research, engineering or scientific expertise is likely to be central to profitability. As a general rule, employees in those functional areas (which are also usually line rather than staff positions) will have better advancement potential.

b. *Other Factors*. There are usually meaningful differences in predominant management style and valued employee behavior between different corporations, even in the same industry. For example, one employer may value somewhat egalitarian management, while another prefers a more authoritarian approach. Or, one employer may value employee initiative and creativity, while another may place a higher value on mastery of standard procedures. Or, one employer may require rotational assignments (with or without frequent relocations or international stints) to develop a broad knowledge of the business, while another may more heavily weigh depth of expertise in the business area to be managed. Such differences also can extend to matters such as acceptable dress, expectations concerning uncompensated overtime, socializing outside work hours, etc.

These and other differences are not necessarily conscious ones. However, the degree of "fit" between what a corporation values and what an employee values or learns to value can influence whether a person will advance to management and, if so, what management level he or she is likely to reach. The importance of such "fit" usually increases with management level.

---

[278] See FCCM 4K – Completion of Compliance Evaluation: Exit Conference, Report Writing and Notice of Evaluation; also, FCCM 2D04 – Exit Conference.

4G02 INTERVIEWS

As with any review, a prime source of information will be interviews of both management and employees. Consistent with the guidance in Chapter 2, contractor representatives, including internal or external attorneys or external consultants, may be present during interviews of management and supervisory employees.[279] However, if a CO is interviewing a management or supervisory employee who is also a complainant or potential complainant, or is being interviewed in his or her capacity as an employee rather than a management official, the CO must conduct the interview in private. The determination of whether the management employee is a potential complainant or victim and whether the contractor's representative can be present is fact-specific. Therefore, COs should consult with the RSOL and the national office prior to engaging in these types of interviews.

As always, there will be some common questions. In addition, COs should tailor interviews to the specific areas of concern being investigated. Likewise, a CO must take care to select individuals for interviews who have knowledge or experience in the relevant areas of concern. In all cases, a CO should start with key corporate personnel and human resources officials to discuss and develop an understanding of corporate policies and practices in the following major areas:

- The contractor's middle and senior-level management positions and how the contractor fills them;[280]
- The use of outside hiring to fill middle and senior management positions and how the contractor locates and screens candidates;[281]
- The use of internal hiring for these positions;
- The "pool" or pools for these positions;[282]
- The mechanisms the contractor uses to identify and develop candidates for those positions, both at corporate headquarters and at subordinate establishments;[283] and
- The reward systems, both monetary and nonmonetary, the contractor uses to retain key personnel.[284]

The CO should also ask for all documentation, whether written or electronic, of policies and practices relevant to these areas that the contractor has not already provided. This includes any personnel and human resource manuals, supervisory and employee handbooks, and any other internal publications that might be relevant.

---

[279] FCCM 2F – Interviews.
[280] FCCM 4D00 – Analysis of Nonfavored Groups' Management Level Participation.
[281] FCCM 4H01 – External Hires.
[282] FCCM 4D01 – Functional Areas; Subsection 5H02- Internal Development.
[283] FCCM 4H04 – Internal Development.
[284] FCCM 4I – Onsite: Retention.

4H ON-SITE: FILLING OF MANAGEMENT JOBS

As previously indicated, COs will have requested data on the hires, promotions and transfers into jobs at, above and below the level where the participation of nonfavored group members declines. COs will review this data to determine which methods the corporation used to fill jobs at each grade/level during the data period and then conduct the appropriate analysis. Although the process of analysis is essentially the same as for any review, there are certain elements that are unique to CMCEs. The following subsections discuss the CMCE-specific factors COs may need to incorporate into the analysis. These factors apply whether the contractor fills the positions in question externally or internally.

The basics of conducting a hire or promotion analysis are not re-addressed here. However, where additional clarification is needed, these subsections include sample questions and analytical guidance. These sample questions should be viewed as guides for COs on information to research and consider for inclusion in the interview outline or used as actual questions to be asked of the contractor and its employees.

4H00 GENERAL QUALIFICATION STANDARDS

Corporate officials may cite any number of factors in describing what background and characteristics they look for in candidates for management positions. Among the factors may be a degree in a particular subject area or having an advanced degree, tenure with the corporation, successful profit and loss experience, international stints, and broad knowledge of the business or corporation. Whatever factors the contractor cites, COs must ask sufficient follow-up questions during interviews to thoroughly define the factors and to determine why the corporation believes the factors are important to the specific jobs, and how the corporation believes people acquire or could acquire such characteristics. Below are some follow-up lines of questions for several common factors contractors use. This is not an exhaustive list of questions or lines of inquiry and should only be used as a guide to develop a comprehensive Interview Plan tailored to each witness.

- If the contractor views advanced or specialized degrees as important for a specific management position or level of management, COs could ask follow-up questions in these areas:
    - What level or in what field(s) must the degree be? For which position(s)? Why?
    - How important is a specific college or university? Why?
    - Can a person earn an advanced degree while employed? After hours only? Are there any corporate sponsored degree or continuing education programs? How do these programs operate?
- If the contractor views time with the corporation as important, COs could ask follow-up questions in these areas:

  - How much corporate service is typical for employees at and above the management level where nonfavored group participation declines?
  - Do employees usually earn this corporate service in a specific sector(s) of the corporation? If so, why?

- If successful profit and loss responsibility is important, COs could ask follow-up questions in these areas:
  - Why is it important to the particular management job or group of jobs?
  - Are there particular areas of the business in which one is most likely to gain that experience? Least likely?
  - At what management level does one usually gain it? Does this differ among business areas?
  - Is the number of profit and loss centers increasing, decreasing or remaining about the same?

- If international stints are important, COs could ask follow-up questions in these areas:
  - What is the value of having a previous international assignment? Are the number of these assignments and their duration factors?
  - How are people selected for these opportunities?

- If the contractor views exposure to different facets of the business as critical, COs could ask follow-up questions in these areas:
  - Why is it important?
  - Does this requirement encompass particular business sectors and does the contractor consider exposure to certain sectors more valuable than others? How much "exposure" is required? Why?
  - How do employees learn that such exposure is important to advancement?
  - How do employees obtain such exposure?

Likewise, interviewed employees may cite any number of factors as important to advancement, which may or may not match the factors cited by management. When disparities exist, COs must consider additional sources of information, such as personnel files of individuals actually promoted into the position(s) in question. Beyond basic elements such as advanced degrees, COs should explore how employees acquire the characteristics needed to become managers, with particular attention to any corporate practices that may be informal, such as mentoring, networking, high visibility special projects or rotational assignments.

Whether formal or informal, COs must also consider selection procedures for these programs as part of the analysis. Again, COs must be sure to ask for any documentation regarding the qualification standards for the jobs he or she is examining, and any continuing education, mentoring or similar corporate program. This documentation may include, but is not limited to, personnel handbooks, job announcements, memos, participant lists and emails.

4H01 EXTERNAL HIRES

When externally filling management jobs, particularly higher level management jobs, contractors frequently opt not to use conventional recruitment sources such as newspaper or trade publication advertising, but rather use executive search firms or informal referrals from current executive level employees, or both.

While filling a job by hire, including by using search firms or informal referrals, rather than by promotion or transfer, does not in itself violate any of the laws OFCCP enforces, COs must be alert to any evidence or external hiring patterns that indicate that the decision to hire from the outside discriminates on the basis of a prohibited factor.

4H02 SOURCES OF APPLICANTS AND CANDIDATES

Contractors may use various sources for hiring middle and senior-level managers. These sources may include executive search firms and referrals from employees.

a. Executive Search Firms. As part of the CMCE, COs must determine the sources of the applicants and candidates for the managerial position(s) they are evaluating, and examine the relationship the contractor has with these sources.

- *Types of Search Firms.* A contractor may maintain several different types of arrangements with executive search firms. Below are just three examples.
    - *Firm on retainer.* In this arrangement, the employer usually has a contract with the search firm under which the contractor pays the firm a basic fee for its services, with that fee supplemented for each referral hired. This type of arrangement is more common for professional or entry-management positions where the employer anticipates a continuing need for hires in certain fields, or at certain levels where there is a skills shortage internally, externally or both.
    - *Firm on contingency.* In this arrangement, the firm is usually paid a fee only if a candidate it refers is hired. This type of arrangement is more common for middle to upper-level management jobs and contractors may prefer this when they only occasionally hire from outside.
    - *Unsolicited Referrals.* Contractors may sometimes hire from among unsolicited referrals from an executive search firm. In this arrangement, the firm is paid a fee only if the candidate is hired.
- *EEO and Affirmative Action Obligations in Referrals.* Contractors, under the equal opportunity clauses in their contracts, retain responsibility for ensuring that solicitations

for employees placed on its behalf by a search firm or other referral source comport with all of the contractor's EEO and affirmative action obligations.

Consistent with those clauses, as well as with its obligation to incorporate the equal opportunity clauses in its subcontracts, the contractor is urged to notify the search firm of its EO obligations including that the firm, in seeking candidates on its behalf, must actively seek to include qualified members of diverse groups among those recruited and referred for listed jobs.

- *Monitoring Referrals*. Contractors using search firms must monitor referrals received by sex, minority group and, when possible, protected veteran and disability status as part of its internal auditing and reporting systems under 41 CFR 60-2.17(d), 60-300.44(h) and 60-741.44(h). A contractor should ask its search firm how it locates and selects candidates if the search firm fails to refer women, minorities, individuals with disabilities or protected veterans.

  A contractor is not relieved of its obligations related to recruitment by using a search firm; it must ensure that any firm acting as its agent carries out the contractor's affirmative action and nondiscrimination obligations.

b. Employee Referrals. Contractors may use employee referrals as a source for new hires. However, as with search firms, the use of employee referrals does not relieve a contractor of its obligations related to recruitment. For example, if a contractor has established a goal for a job group and the contractor relies on employee referrals to recruit that group, the contractor could make clear to employees that it desires referrals of a diverse group of qualified candidates. The contractor might also supplement employee referrals with other sources of qualified applicants for the jobs involved, such as by seeking referrals from organizations that focus on providing services to minorities, women, individuals with disabilities or protected veterans.

A contractor's exclusive use of employee referrals may be discriminatory where there is evidence that the intent behind that reliance is to exclude underrepresented group members from consideration for certain jobs. Reliance on employee referrals may also be discriminatory when such reliance has an adverse impact on a particular sex, race or ethnic group, and is not job-related and consistent with business necessity.

4H03 SAMPLE QUESTIONS AND ANALYSIS FOR VARIOUS SEARCH SOURCES

If, in the course of a CMCE, a CO finds that a particular search firm may be discriminating in its recruitment or referral practices, he or she must inform his or her supervisor. As appropriate, OFCCP coordinates with EEOC to investigate the executive search firm under Title VII, as amended and Title I of the Americans with Disabilities Act of 1990 (ADA), as amended. These laws cover the referral and employment practices of employment agencies. Moreover, if a contractor knowingly uses a search firm that discriminates, the contractor will be found in violation of the applicable law(s) enforced by OFCCP.

A CO engaged with a contractor using an executive search firm may want to ask several questions to understand that relationship. Some sample question areas for the contractor are below.

- Have you used executive or other search firms? When and how often? Which firms do you use most? Identify the positions or types of positions (*e.g.,* fields, levels) for which you have used search firms?
- Have you informed those firms of your EEO/Affirmative Action policy? How? When?
- Who is responsible for monitoring search firm referrals to ensure that the firm complies with EEO and affirmative action requirements? How is monitoring accomplished?
- What is the demographic composition (race, ethnicity, sex, disability and protected veteran status) of those who the contractor hired from among search firm referrals? What efforts did the search firm make to ensure a diverse candidate pool?

COs must conduct an analysis of the information and data received from contractors on their sources of applicants and candidates. For each job filled with a referral from a search firm, the CO should determine, when possible:

- The qualifications the search firm used to refer a candidate;
- The extent to which the contractor approved these qualifications or the amount of input the contractor had in the process to refer a candidate;
- The total pool of candidates who met the requirements to be referred, by race, ethnicity, sex, disability and protected veteran status, and the total number of applicants actually referred by race, ethnicity, sex, disability and protected veteran status;
- The status of the selectee as a member of an underrepresented group;
- The presence of members of underrepresented groups among the referrals made by the search firm;
- The existence of members of underrepresented groups as applicants for the job from other external sources; and
- The existence of internal candidates for the job identified by race, ethnicity, sex, disability and protected veteran status.

A CO engaged with a contractor using employee referrals may want to ask several questions to understand that process. Some sample question areas for the contractor are below.

- How much, or to what degree, do you rely upon employee referrals for middle and senior-level management positions? Is this practice formal or informal?

- What is the typical relationship between the employee making the referral and the person being referred (*e.g.,* used to work together, went to the same school, met through a professional association, belong to the same club, a neighbor, a relative, a personal friend)?

- Do you receive employee referrals for members of diverse groups? How many were referred by race, sex, ethnicity, disability and protected veteran status? To whom were the members of diverse groups referred? Were any of the individuals referred hired?

- Do you inform employees that the corporation is actively interested in referrals of underrepresented individuals? How are they informed? When are they informed?

- Do you provide a reward or bonus for referring a candidate that is ultimately hired?

When collecting and analyzing employee referral data, COs must remember that information on whether a person was an employee referral will not necessarily be in an applicant log. If no referrals are shown on a log, the CO needs to examine a sample of the files of people hired at the same level involved. Information on the employment application and interview notes may provide an indication of the source of the applicant or candidate. The CO may also be able to obtain relevant information through interviews of successful candidates (*e.g.*, those hired or promoted into the job title at issue).

4H04 INTERNAL DEVELOPMENT

If not already provided, the CO must request documents on the contractor's promotion, training, and transfer policies and procedures. With this information, the CO should discuss the procedures with human resources and other appropriate corporate officials. In particular, the CO must clarify how the procedures apply to headquarters positions at, above and below the management level where nonfavored group member participation declines. The CO must also clarify how these procedures apply to movement from subordinate establishments to corporate headquarters and vice versa.

For most corporate management positions, particularly at the higher senior levels, placement through internal movement like promotions and transfers, rather than by new hire, is generally the rule. Therefore, in order to conduct a proper analysis, it is important that the CO fully understand the various elements that can affect internal placement, particularly those unique to a CMCE, such as succession plans. Further, the higher the management level, the less likely it is that the contractor will include the jobs in any formal job announcement system the contractor may have, and the more likely it is that the contractor includes the jobs in some kind of formal or informal succession planning.[285] Below are several sample question areas that COs may find helpful.

[285] See FCCM 4H04 – Succession Planning.

- How do you make promotion and transfer opportunities known to potential candidates? Is the process the same in all functional areas? Are there differences in the process for positions at the upper management levels?

- Do you make openings at corporate headquarters known to employees in subordinate establishments as well as to employees at headquarters? How? How do employees at subordinate establishments express an interest in being considered for an opening at corporate headquarters?

- Do you make openings at subordinate establishments known to employees at corporate headquarters? Who is responsible for doing so? How is it done? What is the process by which employees at the corporate headquarters express an interest in being considered for openings at subordinate establishments?

- How many employees applied for positions at the corporate headquarters? Identify these employees by race, sex, ethnicity, disability and protected veteran status, and identify how many were hired?

The CO should review promotion and transfer actions for conformity with the corporation's stated policies and practices. The CO should also interview the contractor's current, former and new employees regarding their understanding of, and experiences with, the corporation's promotion and transfer practices at the corporate, regional and subordinate establishment levels.

The CO should examine personnel files of managers at and above the level where nonfavored group member participation declines.

a. Succession and Related Planning

The vast majority of corporations engage in some form of planning for future management and personnel needs. These plans go under many different names, such as "human resource development plans," "succession plans," "business plans," "management reviews," "replacement tables," "developmental needs assessment," "high-potentials," "fast-track" and "promotion rosters." The scope and detail of the plans may vary considerably. Areas where there may be the greatest variance include:

- The depth of the plan or how deep into the organizational structure the plan reaches;

- The degree of centralization or the degree of control exercised by corporate headquarters compared to the regional headquarters or subordinate establishments;

- The degree of formality involved with the plan (*e.g.,* the existence of a written plan, the use of regular plan reviews); and

- The degree the plan is affected by standard performance appraisal or other personnel processes.

When succession planning is explicit or more formal, there may be more specificity and several contingent options when implementing the plan. For example, an explicit plan may specify that a specific person is ready to step into the job or position as a permanent replacement for the incumbent, if necessary. It will also have contingencies should that person be unable or unavailable to assume the position. If no one is currently ready to assume the position permanently, most formal plans still provide a way forward by:

- Designating a person who could take over until a permanent replacement is developed; or
- Designating one or more persons who could be a permanent replacement, given additional developmental experiences or training, or both. The plan would also identify needed training and experiences, how long it will take and other appropriate detail.

In addition, to this level of specificity, a corporation may identify:

- A pool of employees (either specific, named individuals or a description of an employee group such as the number of employees currently in feeder jobs) the contractor considers to have a high-potential to develop into middle to senior-level managers; and
- A broader pool of employees the contractor considers promotable (either specific, named individuals or a description of an employee group such as the number of employees currently in feeder jobs).

The identification of employees, whether for a particular job or generally, is usually fluid, *i.e.*, people may move onto or off of lists depending on shifting business needs, changes in personnel or individual job performance.

COs may want to ask specific questions about succession planning to determine if all qualified candidates are considered, and whether employees with potential have access to training and other developmental opportunities. Several sample question areas are below.

- Does the corporation have a succession plan to fill particular management positions should there be one or more vacancies?
- Which management jobs or management levels are covered by a succession plan?
- What does the corporation's plan cover? Does the succession plan include both short and long-term planning, *i.e.*, for people who are currently ready to assume the position, and for those who may be ready after further developmental experiences and training?
- Are candidates in regional headquarters or other subordinate establishments considered when designating possible successors? If so, how are nonheadquarters and headquarters candidates identified?
- Are there written materials describing the plan and offering guidance on selection and development of candidates? Who developed the plan? Are employees advised of the plan?

- If the succession plan identifies specific individuals as potential successors for certain jobs, does the permanent successor most often come from among those identified? What are some examples?

- When is the plan reviewed and modified? Who is responsible for the review?

- What is the representation by race, sex, ethnicity, disability and protected veteran status among those identified as potential permanent successors?

- How does the representation of members of protected groups who are identified as potential permanent successors for management jobs compare to their representation in the total candidate pool (*e.g.,* in feeder jobs) for those jobs?

    - If the proportion of one or more of these groups in the succession plan is well below their proportion in the total candidate pool, what is the reason for this discrepancy?

    - What steps do you take to rectify the problem and recruit and/or prepare more group members to be manager successors? Who (by group member status) has graduated from a succession planning system into management?

- What, if any, developmental experiences does the corporation require or prefer (*e.g.,* on-site training, off-site training, rotational assignments, special projects)? Are there any individual development plans?

- Does the corporation have any policies or practices for identifying people below the management level with a high potential for advancement?

    - How does the process work? How are the individuals identified? What factors are used? Does a person need to be "sponsored" by a current manager? Why or why not?

    - What is the lowest level at which an employee will be considered for succession?

    - Are there any written materials describing the process, offering guidance on selecting and developing participants?

    - How closely and how often does corporate headquarters monitor the process? Does the monitoring include ensuring that affirmative actions are taken to guarantee EEO in all aspects of succession planning and management development?

    - What is the representation by race, sex, ethnicity, disability and protected veteran status among those identified as "high-potential" versus those eligible to be so identified?

    - If the proportion of representation by race, sex, ethnicity, disability and protected veteran status is well below their proportion of those eligible, what, if any, analysis was done and what were the findings?

When the contractor has succession planning programs and there is a disparity in the proportions of representation by race, sex, ethnicity, disability and protected veteran status included in the candidate pool, COs must determine the reasons for the disparity. In order to do so, COs must explore several areas and follow-up including:

- If there is EEO monitoring and an explanation is offered for a disparity, COs should verify the explanation in the course of examining data and files concerning internal mobility, and through interviews with selected employees and managers.

- If there is no EEO monitoring or no explanation is offered for a disparity, COs should analyze the disparity based on the information provided concerning the scope of the program and the criteria for inclusion. A few examples may be:

  - Where there is multi-establishment participation in the succession planning program, do any establishments have a particularly large gap between the percentage representation by race, sex, ethnicity, disability and protected veteran status in the program, as compared with the percentage of identified group members eligible for inclusion (*e.g.,* in feeder jobs)?

  - Were the selection criteria for inclusion in the program uniformly applied?

b. Movement Within Headquarters

- *Transfers within Headquarters*. As with lateral cross-establishment moves, transfers within headquarters may represent planned rotational assignments. Based on information already gathered, COs should identify those moves within headquarters that appear to meet that definition. Also, if the data permits, COs should identify instances in which people transferring were subsequently promoted. When those transfers or promotions are into the level at, above or below the level where nonfavored group participation declines, COs should incorporate the information into the analysis, and interview the employees and selecting officials involved to confirm the reason(s) for each move and how it was initiated.

- *Promotions within Headquarters*. When beginning to determine the frequency, types and paths to internal promotions within headquarters, COs must first make several determinations:

  - What is the typical grade increment involved (*e.g.,* one grade increase, two)?

  - To what extent do promotions tend to remain within broad functional areas (*e.g.,* finance, engineering, personnel)?

  - To what extent do promotions cross functional areas (*e.g.,* from engineering into personnel)?

  - Are there any patterns that stand out regarding functional or cross-functional promotions (*e.g.,* promotions are functional up to a certain level, then switch to cross-functional, or vice versa)?

When there is considerable cross-functional movement, a refined IRA, or other analysis, may be useful for focusing the investigation. For example, if employees typically progress in one grade increments, promotions by favored and nonfavored group status at each relevant grade may be compared with incumbency by favored and nonfavored group status in the next lower grade.

When movement is predominantly within function, the COs should identify functions where promotions occurred. COs should evaluate whether nonfavored group members were not promoted even though there was good participation of nonfavored group members in the source grade. COs should pay particular attention to any functional areas they identified at the desk audit with the greatest disproportion between the participation of nonfavored group members above and below the grade where their participation declines in the workforce as a whole.

When some functions have concentrations of favored or nonfavored group members and other functions have underrepresentation of favored or nonfavored group members, these employees are likely to stay in these positions. This scenario is most likely when movement is primarily within function. COs should examine a sample of the contractor's files on nonfavored group members in the concentrated personnel areas to identify any placement problems.

For example, if nonfavored group members are heavily concentrated in staff positions in a "high-tech" firm, the contractor should determine whether any of them have technical backgrounds that would have qualified them for line functions. If so, did they start in staff positions or move into staff positions later? In either case, did the contractor determine why nonfavored group members are heavily concentrated?

- *Average Time in Grade or Corporate Service*. One way for COs to evaluate whether nonfavored group members are progressing in the managerial ranks is to look at the average time they spend in their current pay grade in comparison to members of the favored group in the same grade. COs can also extend this comparison to corporate service or tenure. COs should refine the focus of their inquiry if nonfavored group members spend considerably more time in the same grade than their counterparts. To do so, COs may focus on the possible reasons for the differences. For example, they can seek to determine whether nonfavored group members hold the type of jobs that limit opportunities, or whether the contractor passes over nonfavored group members for promotion. Alternatively, the analysis may show that nonfavored group members have less time in a grade than their peers. If this is the case, service time may be an explanatory factor for nonfavored group members not advancing to higher positions.

- *"Typical" Career Paths*. COs should ask whether promotions show repetitive patterns that appear to represent "typical" career paths within major functional areas. For example, in the functional area of purchasing, COs may want to explore whether promotions tend to be from being a Buyer, to becoming a Purchasing Supervisor, and then to a Purchasing Manager. In sales, COs may want to determine whether the typical career path is from Account Executive III to II to I, to Area Sales Manager, and then to District Sales Manager. When these progressions appear, COs should compare the

representation of nonfavored and favored group members with the feeder titles of the composition of those promoted.

c. *Cross-Establishment Movement*

- *Movement to Headquarters from Subordinate Establishments*. Early in the corporate management evaluation, COs must determine the degree to which the contractor fills management openings at corporate headquarters by promotion or transfer from subordinate establishments, rather than from within headquarters itself. This balance may vary depending on the management level or functional area. For example, at lower management levels, promotions or transfers may be predominantly within headquarters, while at higher levels, they may come predominantly from outside headquarters.

  Such information will assist COs in identifying feeder pools for management jobs and, therefore, may influence whether COs expand the evaluation to include one or more subordinate establishments.[286]

- *Movement from Headquarters to Subordinate Establishments*. Promotions and transfers out of headquarters to subordinate establishments also may be relevant, particularly in situations where the contractor views exposure to different operating business components as important to advancement to or above the level where nonfavored group member participation declines.

- *Rotational Assignments*. Cross-establishment transfers, whether into or out of headquarters, or between nonheadquarters establishments, may represent planned rotational assignments as a part of a formal or informal development program.

  As with the choice to fill a job by hire or promotion, the choice to fill it by transfer rather than promotion, or from a subordinate establishment rather than within headquarters, is itself a selection decision. While that decision may appear to be EEO neutral, COs should be alert for any pattern that suggests a correlation with a prohibited factor. Sample question areas that may be helpful on this and related points are below.

- Is work experience in subordinate establishments important to advancing to corporate management positions? In what fields? Is working at corporate headquarters important to advancing to senior management at subordinate establishments?

- When is a cross-establishment move generally made during an employee's career?

- Are cross-establishment moves ever part of a formal career planning process? How does this fit into long-term succession planning?

[286] See FCCM 4A01 – Scope of CMCEs.

- Are rotations through the corporation's overseas locations a 'preferred' or 'required' qualification for moving into senior management positions, either officially or unofficially?

- What happens if an employee refuses a job offer requiring relocation? Are the effects of refusing to relocate on career prospects the same for all employees who refuse to relocate?

  COs must review any written material on corporate policies related to promotions and transfers, as well as the data requested earlier on promotions and transfers to management jobs at, above and below the level where nonfavored group member participation declines. At a minimum, the data in the analysis should include:

- The date of each promotion or transfer;

- Race, ethnicity and sex information of each selectee;

- Disability and protected veteran status of the selectee, when known; and

- The job title, grade and department, as well as the establishment from which and to which the promotion or transfer occurred, if it is not within corporate headquarters.

d. *Promotions and Transfers into Headquarters versus within Headquarters*. COs must determine the extent to which feeder pools for headquarters positions are internal and external to headquarters. COs must separate promotions from subordinate establishments into headquarters from promotions within headquarters. COs should do the same with transfers.

   COs should ask or seek to determine how, at given grades or types of functions, the volume of promotions and transfers into headquarters compares with the volume within headquarters.

e. *Promotions and Transfers into Headquarters from Subordinate Establishments*. If subordinate establishments are an important feeder pool, COs must examine the participation of nonfavored group members in this pool. For promotions and transfers from subordinate establishments into headquarters, COs must note the grade level and originating establishment.

   COs should address several question areas related to promotions and transfers into headquarters to identify potential problems:

- How does the majority of the movement into headquarters occur? Is it from only a few establishments? Are these establishments part of a particular intermediate business group?

- How does the participation of nonfavored group members in exempt positions in establishments from which promotions or transfers, or both, occurred compare to their participation in exempt positions in other establishments?

f. Performance Appraisals. Performance appraisals are an important and essential management tool. This tool can inform promotion and other decisions. The vast majority of corporations have a formal performance appraisal process for exempt staff. These processes differ in a number of ways, among them:

- The frequency with which performance appraisals are conducted, although most are conducted annually.[287]

- The degree to which the employee being appraised contributes to the process. For example, in some instances, the process begins with the employee giving a written self-evaluation of his or her progress against performance goals established in the last appraisal cycle. Sometimes this evaluation includes indicating what his or her goals are for the coming year.

- The manner in which the appraisers express the evaluation ratings. Some appraisers use only numeric values and others may use a narrative.[288]

- The requirement that employees sign their appraisals and whether employee comments are permitted.

- The level of the individual responsible for reviewing the appraisal.

Corporations link appraisals to salary increases, bonuses and promotions. Section 4H touches on issues related to promotions and Section 4I reviews issues related to salaries and bonuses. COs will want to know whether the corporation gives employees in the same grade level who receive a given rating the same percentage raise. COs will also want to know when a formula is used for determining raises and bonuses, and how heavily the rating is weighted. COs may find the below sample questions on performance appraisals useful.

- What is the corporation's performance appraisal process for exempt staff? Does the corporation use the same appraisal process for all exempt staff? Is the process different for the various levels or grades in the company?

- Does the corporation use a numeric or narrative appraisal rating? If neither of these is used, how is the rating method described?

---

[287] If a regular appraisal cycle is supplemented by a "benchmark", a longer-term career assessment process such as career reviews at the third and seventh years of employment may take place. The career assessment processes may be a component of succession planning. More on succession planning is in FCCM 4H04.

[288] For example, an "outstanding" rating may be valued at four points or assigned the number four, while an "unacceptable" rating may value at zero. A narrative rating would consist of a brief overview summarizing an employee's level of performance and accomplishments to substantiate a particular rating. Still, other corporations may use both numeric and narrative forms of evaluation. Be aware that appraisal factors for supervisors and managers typically differ from those for professionals and, the higher level the manager, the less likely it is that the appraisal is only numeric.

- What are the highest and lowest scores for the corporation's numeric rating system? What is the range of acceptable scores? How is the range of acceptable scores established? When was the range established and when was it last modified?

- What score or performance rating does an employee generally need for promotion?

- Are there any written guidelines or training on how to administer the appraisal? Describe the guidelines the corporation provides to the rating official. Is reference made to EEO? If so, explain.

- How often are your employees appraised? Who appraises them and who approves the ratings? What is the degree of employee input?

- Is career planning included in your process? Is this planning short term, long term or both?

- Are "benchmark" or career interval appraisals used?

- Does the corporation monitor appraisal results for EEO? If so, how? What have been the results?

- Are raises, including bonuses and promotions, based on appraisals? If so, what is the relationship?

After gaining a better understanding of the appraisal system and the use of employee ratings, COs should analyze this information. For example, if a CO learns that a numeric system is used, the CO should determine the average rating for the nonfavored group at the grade level just below where nonfavored group member representation declines. If the average appraisal rating is substantially lower for nonfavored group members, the CO must determine if the contractor's EEO audit offers any reasons or explanations. Other areas of inquiry include determining:

- What, if any, actions the contractor took to eliminate the disparity; and

- Whether the disparity is traceable to certain functional areas.

If the corporation uses a narrative system, then the CO would explore any differences in the tone between appraisals of nonfavored and favored group members.

g. *Visibility*. One element of career advancement can be the amount and type of exposure to senior corporate management through assignment to special projects, task forces, corporate committees or through appointment to special assistant and executive assistant type positions.

Being assigned special projects and working on teams and groups are ways employees gain increased visibility within the corporation. There is considerable variation in the degree to which corporations use special projects, working groups and teams. Some projects may be more desirable than others in terms of opportunities for skills development and visibility. In some industries, this difference will be fairly clear simply because of the nature of the

industry, or the corporation may have a formalized structure. For others, COs may need to rely on employee and management interviews, as well as any group award program maintained by the contractor, that may reflect projects that were particularly desirable.[289]

COs will want to compare the nonfavored and favored group composition of special project teams and task forces with the nonfavored and favored group composition of the jobs or functional areas from which members were or reasonably could be drawn. Below are several sample questions that can result in useful information on opportunity and participation of nonfavored group members on teams and groups.

- Does the corporation make use of special projects, and teams and working groups? If so, in what areas of the business?
- How are members selected and by whom?
- What special projects, teams and working groups are currently operating? What is the favored and nonfavored group composition of each?
- Are selections monitored to ensure equal opportunity for all eligible nonfavored group members? If so, by whom? Have there been any cases where a concern was raised and, if so, how was it handled?

h. *Corporate Committees*. Most boards of directors appoint standing committees to monitor and keep the board informed on a specific subject area. In many cases, these committees may simply reflect functions. The appointment to these committees is usually nondiscretionary and based solely on position. It can be useful for COs to know the composition of such committees in order to understand the nonfavored group composition corporate-wide of such positions.

There may also be special purpose committees that draw from a wider range of positions and levels within the corporation. Serving on these committees often provide members career enhancing opportunities through exposure to corporate leadership, networking, mentoring relationships and broadening knowledge of the corporation. COs should examine nonfavored group member participation. COs should compare the membership for each committee with those eligible for such membership. For functional and position-based committees, COs should ensure that all qualifying employees are included as members and determine the reasons for any discrepancies.

i. *Special Assistants and Executive Assistants*. People holding such positions, particularly ones reporting directly to senior corporate management regardless of actual title, may be on a "fast-track" to middle management positions by offering the incumbent enhanced developmental opportunities. In some cases, there may not be formal guidance on the creation or appointment of employees to these positions. In such cases, interviews can be critical to gathering useful information.

---

[289] FCCM 4I01 – Recognition: Awards and Honors.

In addition to other sources of information on these positions, COs should review the organizational profile for any special assistant and executive assistant type of positions. Note that if such titles are nonexempt, or relatively low-level exempt, the incumbents may be in support staff rather than "fast track" positions.

j. *Assignments in Particular Industries and Lines of Work*. In some industries, a number of people may share the same or very similar titles and yet differ substantially in the career growth potential offered by their assignments. For example, in sales positions, some product lines may offer higher commission potential than others. Some territories may have been worked extensively, and thus offer primarily opportunities for renewal or upgrade of orders. Others may be relatively unworked and thus offer a greater opportunity for new business. For account managers, the dollar volume and growth potential of accounts managed are important to advancement.

After identifying distinctions between favorable and less favorable assignments, COs should determine if nonfavored group members are underrepresented in the former and concentrated in the latter. COs should determine how the corporation makes assignments, particularly for the most and least valuable. They should ask if these assignments are monitored to ensure equal opportunity for all eligible employees. It is also important to know if there is a formal structure that defines the value of these assignments.

4H05 MANAGEMENT TRAINING AND EXECUTIVE DEVELOPMENT

A CMCE should cover both management training and executive development programs. The success of new and high potential employees is influenced by how quickly they learn people-oriented management skills that complement their expert or technical knowledge. Management training is a source of the key skills, best practices and behaviors of effective managers like leadership, delegation, motivation, empowerment, communication and vision. Possessing these skills and traits increase the likelihood of being promoted or transferred into corporate management or other leadership positions. If a corporation offers any management training, COs must determine how it is delivered, who is eligible to participate, who makes the decisions, and how the decisions are made by the corporation. Other relevant question areas are:

- Is the training a requirement for a management position? Has the corporation placed any people directly into management without such training? If so, what is their nonfavored or favored group status?
- How does an employee learn of the training? How is an employee selected for it?
- Who monitors participation in training to ensure equal opportunity for all eligible employees?
- What is the composition of the nonfavored and favored groups based on the individuals participating in training over the last year (or evaluation period)?
- How does that composition compare with the nonfavored and favored group composition of those eligible to participate in training?

- If there is a substantial difference between the proportion of nonfavored group members eligible and those participating, what cause was found?

- Does the training include any segments on EEO or diversity management? Up to what level do managers attend?

Executive development programs can be internal, external or both. These programs represent a substantial investment by the corporation in the development of people viewed as potential senior executives. They generally prepare middle-management executives to become more effective leaders and change agents within the company. Because the number of participants is typically small, it may be most useful to look at who participated at some point in their career, rather than only those who participated during the evaluation period. COs may want to ask questions in areas like those below.

- What level manager is eligible? Are there, or have there been, any exceptions to the eligibility level (*e.g.,* have managers below the designated level ever been able to participate in the program)? If so, who authorized those exceptions and why?

- How are people selected for executive development programs? By whom? Are selections monitored to ensure equal opportunity for all eligible employees? Have there been any cases where someone raised a concern and, if so, how did the corporation handle it?

- Among the eligible managers, can you identify who participated in the executive development program by sex, race and ethnicity? If there is a nonfavored group, the CO should ask whether members of the nonfavored group participate, were their training programs comparable in type, school, duration and other relevant areas to those attended by their favored group peers?

- If there is a nonfavored group, the CO should ask managers of that group whether there are plans for members of the nonfavored group to participate in executive development programs? Did their predecessor participate? At what point in his or her career?

4H06 MENTORING AND NETWORKING

In addition to formal management development programs, many senior managers report having had mentors at some point in their career who served as role models, translators of corporate culture or advocates. Because these relationships are generally informal, and may be initiated by either the potential mentor or "mentee," interviews may be the only way to determine if:

- Mentoring exists at the management levels under review;

- Mentoring is an informal or formal program with policies and guidelines; and

- Mentoring carries weight or is value-added in the career advancement process.

COs should also find ways to determine if there are any potential concerns regarding participation of nonfavored group members.

In addition to examining the role and importance of mentoring in career advancement, COs must also consider networking. As used here, networking is the establishment of contacts beyond one's immediate work setting or level, or both, that confer a business benefit. Some corporations have established groups that provide a formal opportunity for managers at a given level to network across division and often establishment lines. If the corporation has such a group, COs should determine the level of managers eligible to join, and ensure that any nonfavored group member managers at that level or above are offered membership on the same basis as their peers. Other networking opportunities may be found in outside professional associations and/or social clubs. If the corporation supports membership in such outside organizations, COs should ensure that eligible nonfavored group member managers receive such support on the same basis as their peers.

Unlike formal networking, informal networking is generally interacting across establishment or functional lines with peers and higher level managers. If a corporation does not formally disseminate information on job openings or does so only up to a certain level, networking may be the prime source of information about job openings, particularly those at other establishments. Also, contacts established over time can contribute to career enhancing assignments on work projects involving other departments or establishments.

Although the general assumption is that informal networking is a matter of employee initiative, some corporations affirmatively encourage the development of such contacts among groups not currently well represented in management jobs by, for example, sponsoring meetings or establishing committees that bring together group members from different functions, establishments or management levels.

COs do have certain things to consider when evaluating the role of networking, such as:

- Do internal formal networking groups exist? How and by whom are they administered?
- Who is eligible for membership? How and by whom is membership extended or approved? Who monitors membership to ensure equal opportunity for all eligible employees?
- Have there been any potential concerns regarding participation of nonfavored group members? If so, how were the concerns handled?
- Does the corporation encourage or sponsor participation in external networking groups? If so, which ones and what form does the corporate 'support' take?
- Does the corporation ensure that all eligible employees know about this option? How?
- Who monitors the program(s) to ensure all eligible employees have equal opportunity to participate and receive the same support? Have there been any potential concerns regarding eligible nonfavored group members? If so, how were the concerns handled?

- Does the corporation promote informal networking opportunities? How? Are there specific target groups?

4I ON-SITE: RETENTION

A major way a corporation retains key personnel at all levels of its workforce is by paying a competitive salary for the type of work involved and offering benefits at least comparable to those offered by other corporations in its industry. Corporations may additionally have honor and award systems to recognize, reward and thereby encourage high performance.

4I00 OVERVIEW OF TOTAL COMPENSATION PACKAGES

Fair pay is a critical issue for workers and their families, and a cornerstone of OFCCP's equal employment protections. As such, identifying and remedying compensation discrimination has long been an important goal of OFCCP compliance efforts. The Executive Order and the implementing regulations specifically require contractors to ensure pay equity. They place federal contractors under affirmative duties to maintain data, conduct internal review and monitor pay practices for potential discrimination, and prohibit discrimination in the paying of wages, salaries and other forms of compensation.[290] Nevertheless, BLS data and numerous research studies indicate that unexplained disparities in compensation on the basis of sex and race continue to exist. COs should also be mindful that the implementing regulations of both Section 503 and VEVRAA similarly prohibit compensation discrimination on the bases of disability or protected veteran status, and require contractors to ensure pay equity.

OFCCP follows Title VII principles in investigating and analyzing compensation discrimination. While the approach set forth in Chapters 1 and 2 for analyzing compensation applies, there are additional complexities in typical corporate compensation programs for high level jobs. As in any other compensation analysis, the objective is to determine whether employees receive compensation and benefits to the same extent, and under the same standards, as their similarly situated peers, without regard to sex, race or ethnicity. If not already provided, the first step should be to request any formal policies the corporation has regarding each type of compensation. In addition to reviewing the policies, the CO will probably need to use interviews to determine at what level employees become eligible to receive each type and what, if any, exceptions the corporation has made for people below the specified level.

When investigating compensation cases at the corporate management level, COs must have an understanding of the compensation structure. As management level increases, it is likely that total compensation goes well beyond the base salary typically reflected in a workforce analysis.

Similarly, COs will find that benefits go well beyond what is standard for other employees. At higher management levels, base salary is often supplemented or, for top managers, exceeded by other forms of compensation such as cash bonuses, stock awards and stock options. Standard benefits are usually supplemented by what are often referred to as perquisites or "perks." Perks are numerous and varied. Examples include the use of corporate cars, concierge service that

[290] 41 CFR. 60-1.4; 60-1.12; 60-2.17(b)-(d).

offers discounted services, free trips, access to the corporate plane, and housing subsidies or allowances.

Upper level management compensation, benefits and perks can be specialized and can be closely held within some corporations. Therefore, it is usually necessary to interview the person in charge of compensation and benefits at the corporate level, identify who maintains the data and, if necessary, interview an official who has recordkeeping responsibility for the corporation.

a. Bonuses. As used here, bonuses refer to those that are predominantly exclusive to the management level. An addition to base salary, bonuses may be granted in cash, stock or in some combination thereof. Corporations most often distribute bonuses annually, usually soon after the end of a corporation's fiscal year or performance appraisal cycle. Corporations may distribute bonuses as a lump sum or over a specified period of time, in which case, COs should consider the totality of the award in the analysis. In a multi-establishment corporation, it is fairly typical for the bonus "pot" to be allocated to component business groups in some proportion to their contribution to corporate profitability over the bonus period. Those business groups, in turn, may similarly allocate their bonus "pot" to their component establishments. Bonuses thus provide an incentive for managers to improve profitability. This incentive tends to increase as a larger proportion of a manager's compensation comes from bonuses rather than from base salary or other forms of compensation.

Cash bonuses are most often a percentage of base salary. When reviewing potential compensation issues where cash bonuses are involved, some areas COs should consider include:

- The level or salary grade at which employees become eligible for cash bonuses;
- The history of bonuses being granted to employees below this level;
- The role of corporate headquarters in allocating cash bonuses;
- The role of intermediate headquarters and subordinate establishments in allocating bonuses;
- The standard the corporation uses to determine whether an employee receives a cash bonus;
- The individuals, including their specific roles, determining who is eligible, what standards to apply and the amount of the bonus;
- The levels of review and approval in the process; and
- The existence of safeguards that ensure that all eligible employees are given equal consideration in the allocation of cash bonuses.

In addition to exploring these areas, COs should ask questions to gather information on the consideration and representation of members of nonfavored groups during the bonus process. Below are a few sample questions.

- What proportion of those eligible, separated by nonfavored and favored group status, received a cash bonus?
- If there is a nonfavored group with respect to bonus allocation, did the contractor review bonus allocation to ensure nondiscrimination? What were the findings or results?
- What is the average cash bonus separated by nonfavored and favored group status?[291]
- If there is a nonfavored group with respect to average bonus amount allocated, did the contractor review allocation to ensure nondiscrimination? What were the findings or results?

b. *Stock*. Corporate stock plans can be a particularly strong incentive to improve corporate performance, since such improved performance usually increases the stock's share price and thus increases the value of any given number of shares of corporate stock an employee holds.

Employers may sometimes use company stock as a bonus but may also use it as a way to retain key employees or to provide an incentive for a given action. The corporation also may offer employees the option to purchase corporate stock on favorable terms. If the corporation has not already provided it, COs should request any written policies and procedures regarding use of stock as a management incentive.

- *Stock Awards – One-time Bonuses*: Corporations occasionally pay bonuses, in whole or in part, in corporate stock. This may be an outright grant, usually annual, of a certain number of shares of stock at the market value at the time of the grant. More often, however, a stock award is vested over a number of years.
- *Stock Awards – Vested*. The term "vested" is more commonly associated with time-in-company required to begin accruing retirement and/or health benefits; it can also be applicable in this context.

  A stock award is vested when an employee, instead of immediately receiving a given number of shares, receives those shares after a given number of years (the "vesting period"). For example, the corporation may award a person 300 shares of stock, with 100 shares allocated immediately, and the remaining 200 to be allocated at the end of three years. Such vested stock awards provide an incentive for the recipient to remain with the corporation since he or she will not receive the remaining stock if he or she leaves.

  Vesting also may be for a specific limited purpose. For example, a stock award may be conditional on an employee action, such as completing a particular project by a given

[291] This may be expressed as the average percentage of base salary.

date. In this case, the stock is "awarded" but it is not allocated unless the employee completes the project by the due date.

- *Stock Options.* This noncash form of compensation offers the employee the ability to choose to buy or not to buy a given number of shares of stock at a specified price within a specified period of time. Stock options are issued as a private contract between the employer and employee. Because the stock options cannot be exercised immediately, employers use them as a way to retain employees. The option to purchase stock may have conditions or limitations, such as limited transferability and vesting requirements. Unless the company performs poorly, employees generally expect to sell the stock at a higher market price and make a profit.

  For example, an employee is offered an option to buy 100 shares of corporate stock at $30 a share (its current market price) at any time within the next five years. If the stock goes down, the employee simply does not exercise the option to buy. If it goes up, however, say to $50 a share, and the employee exercises his or her option, the employee has an immediate profit of $20 a share or $2,000.

When evaluating stock as a part of compensation, there are several things to consider. For any area of potential compensation concern where stock appears to be a factor, COs must determine, for each year:

- The form in which the corporation gave the stock;
- The eligibility criteria;
- The extent the same form of stock was given to all eligible employees in the same manner, at the same time and with the same value;
- The change in stock type between years; and
- The consistency, or lack thereof, in the change in stock type for all eligible employees.

In addition to the above considerations, COs must ask specific questions when reviewing stock given during the last award cycle:

- What proportion of those eligible, by race, ethnicity and sex, received stock?
- If there is a nonfavored group with respect to receipt of stock awards, the CO should ask: Did the contractor review the stock awards to ensure nondiscrimination? What were the findings or results?
- What is the average stock award by nonfavored and favored group status?
- If there is a nonfavored group with respect to average amount of stock awarded, did the contractor review stock awards to ensure nondiscrimination? What were the findings or results?

Finally, if there is a favored group, and the corporation awarded vested stock to keep favored group members with the corporation, COs should review data on terminations to determine if there were any nonfavored group members in similar positions who left the corporation around the same time. If so, COs should determine whether the nonfavored group received vested stock. If not, COs should then determine whether they should have under the corporation's criteria for receiving such stock. When there is a finding of discrimination in the awarding of stock, there are some special considerations to be applied to the remedy. These are identified in Appendix A-7, Special Remedial Considerations Applicable to Stock.

c. *Perquisites*. Called "perks," these are privileges that corporations may provide employees as they reach a certain management level. "Perks" generally are benefits that have cash value, like a corporate car; that save time, like accounting or tax services; that offer a convenience, like the use of corporate plane; and that protect key personnel, like paid medical exams.

As with other compensation elements, COs must determine whether the corporation offers perks, what they offer, how it decides who is eligible for a given perk, and if the proportion of eligible employees receiving each perk differ based on sex, race or ethnicity. COs must also ask if the corporation reviews its allocations of perks to ensure nondiscrimination, and obtain the findings or results of the reviews.

4I01 RECOGNITION: AWARDS AND HONORS

Corporations may offer any number of incentive awards or honors, with or without accompanying money. Often, these are for meritorious achievement, whether individually or as part of a team on a particular project during a year. They can also be for superior performance generally, and be granted in conjunction with an annual performance appraisal. In the latter case, when people have reached the top of the salary range for their jobs, cash awards may be used instead of a permanent increase to base salary to reward high performance.

There are several things to consider when reviewing awards and honors. If not already provided, COs must request written policies and procedures covering all such programs. For each existing program, COs must determine:

- Who is eligible to receive an award or honor, or both? What eligibility criteria were used?

- Who, listed by race, sex and ethnicity, received an award or honor? What are the reasons each person received the award or honor? If there is a disparity by race, sex or ethnicity, were any nonfavored group members recommended for an award or honor, or both, who did not receive one? Why?

- If there is a nonfavored group with respect to receipt of the honor or award, did the contractor review awards to ensure nondiscrimination? What were the findings or results?

- If the award was accompanied by money, and the amount of money varied by race, sex and/or ethnicity, what were the average amounts received by the favored group and the

nonfavored group(s)? Did the corporation review these awards to ensure nondiscrimination? What were the findings or results?

4J ON-SITE: TERMINATIONS

Generally, the higher the job level, the less likely it is that a person's separation from the corporation is recorded as an involuntary termination, regardless of the circumstances surrounding his or her departure. Above a certain management level, if a corporation determines that an employee is not performing as expected, he or she may be offered the opportunity to resign. Therefore, it would not be unexpected to find that the records show all middle and senior-level management terminations as voluntary.

Many terminations, of course, will be genuinely voluntary; some for reasons such as "better job opportunity," or "to spend more time with my family." Such departures, however, may have been influenced by any number of factors, such as a perception of lack of promotion prospects that may or may not have EEO implications.

Even absent statistical disparity, COs should review involuntary terminations of managers, as well as a sample of voluntary ones. COs must conduct the analysis itself in the same manner as any termination analysis, complete with interviews.

4K COMPLETION OF COMPLIANCE EVALUATION: EXIT CONFERENCE, REPORT WRITING AND NOTICE OF EVALUATION

In a CMCE, the Regional Director or Deputy Regional Director, or both, will conduct an exit conference with top corporate officials. The purpose of the meeting is to:

- Present and discuss any violation findings and required remedies to be incorporated in an NOV; and
- Identify and discuss any particularly creative or innovative efforts the corporation made to ensure equal opportunity for women and minorities to advance to middle and senior-level management positions.

As noted in FCCM 4A00, a CMCE includes all elements of a standard compliance evaluation, but with a special emphasis on the issues discussed in this chapter. Accordingly, COs must complete the SCER to document their evaluation findings, but they must pay particular attention to the CMCE-specific section of the SCER that addresses issues unique to a CMCE.

4K00 NOTICE OF EVALUATION COMPLETION

As in any other compliance evaluation when no violations are found, COs send the corporation a notice of compliance evaluation completion, using the evaluation completion notices and

procedures found at Letter L-5, Notice of Closing Compliance Evaluation (No Violations Found).

Note that if the CO finds violations and an agreement that addresses a corporate-wide issue is necessary to bring the corporation into compliance, that agreement should require that the corporation implement the appropriate remedial action at all corporate establishments.[292] If, during an evaluation of a subordinate establishment conducted after the effective date of that agreement, OFCCP discovers that this establishment has not fully implemented the agreement, a follow-up of the corporate evaluation may be necessary.

[292] See FCCM Chapter 8 – Resolution of Noncompliance.

CHAPTER 5
FUNCTIONAL AFFIRMATIVE ACTION PROGRAM COMPLIANCE EVALUATIONS

5A INTRODUCTION

The regulations at 41 CFR 60-2.1(d)(4) permit federal supply and service contractors to develop AAPs organized around distinct business functions or lines of business, rather than AAPs based on the contractor's establishments. A contractor is permitted to develop AAPs for its functional or business units, referred to as FAAPs, only after reaching a FAAP agreement with OFCCP.[293] This chapter provides guidance on evaluating a contractor's compliance with its nondiscrimination and affirmative action obligations when the contractor has entered into a FAAP agreement.[294]

5A00 APPLICABILITY OF CHAPTER

This chapter applies only to contractors with FAAP agreements approved by the OFCCP Director, or designee. Ongoing compliance evaluations of establishments will not be affected by a contractor's request to enter into a FAAP Agreement. Contractor establishments scheduled for a compliance evaluation during the FAAP agreement application process, or prior to the implementation of its FAAPs following the approval of a FAAP agreement effective date, will be completed as establishment-based evaluations if the scheduling letter was received by the contractor prior to the FAAP agreement's effective date.

5A01 PURPOSE OF THE FAAP

FAAPs are designed to provide contractors the option of creating AAPs that better fit their business needs. Any supply and service contractor subject to AAP requirements may request an agreement with OFCCP that allows for the development and use of FAAPs. Some contractors may find it appropriate to develop only FAAPs, while others may elect to use a combination of FAAPs and establishment-based AAPs. Participation in the FAAP program is voluntary for contractors. The FAAP Agreement cannot be construed to limit or restrict how OFCCP conducts its compliance evaluations.

5A02 THE FAAP AGREEMENT

The FAAP agreement is a written agreement between the contractor and OFCCP, approving the contractor to use FAAP(s) in lieu of, or in combination with, establishment-based AAPs. The agreement is issued for a five-year term and outlines the contractor's legal obligations and the procedures for maintaining the FAAP agreement. The FAAP agreement includes an addendum that identifies all of the contractor's approved functional or business units, including a

---

[293] A FAAP agreement addresses only the development of AAPs along functional lines. It does not address how OFCCP will conduct its compliance evaluations.

[294] For further guidance, see OFCCP Directive 2013-01 Revision 2, "Functional Affirmative Action Programs."

description of each unit, contact information for each unit and the employee count for each unit.[295] If a contractor maintains both functional and establishment-based AAPs, the FAAP agreement will include an "Addendum B" that identifies all of the establishments that will maintain establishment-based AAPs. In the FAAP agreement, the contractor also agrees that, during a FAAP compliance evaluation, they will submit personnel activity in a readable and usable electronic format when requested to do so. FAAP agreements are maintained by OFCCP's national office and become effective on the date of the OFCCP Director's, or designee's, final signature. Contractors will have up to 120 calendar days following the effective date to implement its FAAPs, and they must notify OFCCP when the FAAPs are implemented. A FAAP must include the components that are prescribed in 41 CFR Part 60-2 and, if appropriate, Subpart C of 41 CFR 60-300 and Subpart C of 41 CFR 60-741.

5A03 FAAP COMPLIANCE EVALUATIONS

A FAAP compliance evaluation is a full compliance review that includes all aspects of a standard compliance evaluation. However, all AAP components are based on the functional or business unit that is the subject of the AAP, rather than an establishment. If OFCCP selects a corporate headquarters unit under a FAAP Agreement for review, the FAAP compliance evaluation may be designated a CMCE. The CO responsible for conducting FAAP compliance evaluations must follow the procedures in Chapter 1 of this Manual on the procedures for conducting a desk audit, Chapter 2 on conducting an on-site review and Chapter 4 on conducting a CMCE, but with only a few differences. These differences are explained below in Sections 5B through 5E.

5A04 COMPLETING THE SCER

The CO must complete all applicable sections of the SCER to identify the functional or business unit under review, include the results of the desk audit, findings from the on-site review, and off-site analysis. Some sections of the SCER may not be applicable in every compliance evaluation.[296]

5A05 OFCCP PARTICIPANTS IN FAAP COMPLIANCE EVALUATIONS

OFCCP conducts FAAP compliance evaluations under the national office's direction and oversight. The national office's FAAP Branch sends the Scheduling Letter for all FAAP compliance evaluations, and then transfers the evaluations to the appropriate regional office. Contractors send their FAAPs directly to the regional office identified in the Scheduling Letter. The regional office has full responsibility for completing the FAAP compliance evaluation with assistance from the national office, as needed. The national office can assist the regional office in coordinating on-site reviews that need to occur at multiple facilities or within other regions.

---

[295] The employee count specified in the FAAP agreement represents the employees that were present when the FAAP request was submitted as a part of the agreement application process. The employee count in the FAAP agreement may differ from the number of employees reported when the FAAP is submitted during a compliance evaluation due to staff departures, hires or promotions.

[296] See Appendices A-1: SCER and A2: SCER Instructions.

5B PRE-DESK AUDIT ACTIONS

Before the CO begins the FAAP compliance evaluation, the FAAP Branch will provide the CO with a Case Chronology Log, a copy of the FAAP agreement and a copy of the Scheduling Letter. The CO assigned to the compliance evaluation will prepare for the desk audit by:

- Creating a case file;
- Obtaining compliance history reports;
- Following up with the contractor within 15 days after the Scheduling Letter is sent;
- Reviewing community resource files;
- Contacting the EEOC and DOL enforcement agencies, such as WHD and the OSHA, as appropriate; and
- Coordinating with the FAAP Branch to obtain any other information about the contractor and the functional or business unit to prepare for the desk audit. The following sections review these steps.

5B00 CREATION AND MAINTENANCE OF THE CASE FILE

The FAAP Branch will create an electronic Case Chronology Log for each FAAP evaluation.[297] The evaluation is transferred to the regional office when the Scheduling Letter is issued. At that time, the FAAP Branch will provide the electronic Case Chronology Log to the CO who will maintain and complete it as directed in FCCM 1B01.

The CO must create and maintain a case file for each scheduled compliance evaluation. The case file should generally consist of the items detailed in FCCM 1B02 on creating a case file. For a FAAP compliance evaluation, the case file should also include a copy of the approved FAAP Agreement, as signed by the Director of OFCCP, or designee. The FAAP Branch will provide the CO a copy of the most recently approved FAAP agreement upon the scheduling of a new compliance evaluation. This information should be included in the case file in Folder 1.

5B01 SENDING THE SCHEDULING LETTER AND ITEMIZED LISTING

The Chief of the FAAP Branch signs the Scheduling Letter and Itemized Listing for a FAAP compliance evaluation and sends it by certified mail to the managing official of the functional or business unit selected for a compliance evaluation.[298] The FAAP Branch Chief also mails a copy of the Scheduling Letter and Itemized Listing to the corporate contact person identified in the FAAP agreement. Should a Scheduling Letter be received during the review and approval stages (*i.e.*, after submission of the FAAP request but before the effective date of the agreement) the evaluation will be completed as an establishment-based evaluation. A contractor receiving a

---

[297] Figure F-2 – Case Chronology Log.
[298] Figure F-3 – OFCCP Scheduling Letter and Itemized Listing.

Scheduling Letter during the 120 calendar day FAAP implementation period may have its scheduled establishment-based compliance evaluation administratively closed.

The Itemized Listing requests only data supporting the functional or business unit selected for review. Prior to sending the Scheduling Letter notifying a functional or business unit of a scheduled compliance evaluation, the FAAP Branch will contact the corporate contact person to verify that the functional or business unit still exists, and to verify the name, title, mailing address and phone number of the managing official.

It is important to note that the contractor may also have standard establishment-based AAPs covering the remainder of its workforce. OFCCP will schedule compliance evaluations in accordance with the standard scheduling system for parts of a contractor's workforce that are covered by establishment-based AAPs. If a region schedules a compliance evaluation of an establishment that is covered by a functional or business unit, the regional office and CO must contact the FAAP Branch to verify if the establishment is covered within an approved functional or business unit. The FAAP branch will advise the regional office and CO whether to administratively close the evaluation.

5B02 FOLLOW-UP CONTACT WITH CONTRACTOR

When OFCCP sends the Scheduling Letter and Itemized Listing to the contractor, the FAAP Branch will provide a copy to the regional office. The contractor will submit its FAAP directly to the regional office identified in the Scheduling Letter. Within 15 calendar days after the Scheduling Letter and Itemized Listing are sent, the CO must contact the corporate contact person to ensure that the contractor understands the requirements outlined in these items. If there are questions, the CO will provide technical assistance to clarify the requirements and the compliance evaluation process.

5B03 OFCCP COMPLIANCE HISTORY REPORTS

The CO must check OFCCP's CMS and EIS to obtain a list of prior compliance evaluations of the functional or business unit, corporation and its other related functions or establishments. If the FAAP Branch has other historical information on the functional or business unit under review, the branch will provide this information to the region upon initiation of the FAAP review. Checking to determine if the prior evaluations identified any issues is an important preparatory step. If issues are identified in the historical files, the CO must review the record to determine how they were resolved. These previously identified issues may provide useful information and possible indicators of current problem areas. Any violations found in past compliance actions must be recorded in Part A of the SCER. If a prior review of this unit resulted in a CA, the on-site review should provide an opportunity to confirm that the contractor took, and appropriately maintained, the required corrective action.

5B04 CONTACTING EEOC, VETS AND OTHER AGENCIES

As discussed in Chapter 1, it is the agency's practice to contact the EEOC, VETS, state employment services, and EEO and labor enforcement agencies upon the initiation of a

compliance evaluation. Such information helps to provide a better understanding of the contractor's workforce and operations, and may indicate potential problem areas.

However, because of the nature of a FAAP compliance evaluation, the job groups and titles that are under review may be located at multiple locations throughout the country. Therefore, for FAAP reviews, contact with these government agencies is not made upon the initial mailing of the Scheduling Letter. Rather, the CO should contact these agencies after reviewing the desk audit findings to determine which locations would have information relevant to assessing the contractor's nondiscrimination and affirmative action efforts.

5C DESK AUDIT

Initially, the CO will determine whether the FAAP submission is for the functional or business unit identified in the Scheduling Letter. Additionally, the CO must refer to the FAAP agreement for a description of the functional or business unit and verify contact information for the corporate contact person.

If the CO conducting the FAAP compliance evaluation finds problems, he or she should contact the corporate contact person for clarification or additional information before proceeding with the desk audit. If the CO identifies significant changes to the functional or business unit, such that the functional or business unit scheduled for review no longer exists or has substantially decreased or increased in size, the CO should notify his or her supervisor and contact the FAAP Branch Chief to discuss the issue.

The CO will conduct the desk audit as described in FCCM 1C through FCCM 1R with the exception that the CO will analyze the data by functional or business units. In some instances, during a FAAP compliance evaluation, the CO will not have sufficient data to perform an EEO-1 trend analysis in accordance with FCCM 1K. However, they should conduct all other analyses required in a desk audit. Even though the CO may not have sufficient data to conduct the EEO-1 trend analysis, they may be able to use the JAAR analysis as described in FCCM 1N01. This analysis can prove meaningful in analyzing how employees are placed and may show when limited opportunities exist for specific groups throughout the functional or business unit. This analysis can be conducted by job group despite the possibility of job groups being spread across many different locations. The CO should complete all applicable sections of the SCER and further investigate identified problem areas and indicators of adverse impact during the on-site review.

In conducting analyses of employment decisions like hiring, terminations, promotions and compensation, the CO should examine the data by function and business unit, and job group and job title, or any combination thereof. If indicators of discrimination are identified during the desk audit, the CO, in conjunction with their manager, must consult with the Branch Chief of Expert Services to identify the best methods for analyzing the data.

5C00 REVIEW OF SECTION 503 AND VEVRAA AAPs

Contractors with approved FAAP agreements must continue to comply with Section 503 and VEVRAA obligations by: (a) creating and maintaining Section 503 and VEVRAA FAAPs for the same functional or business units that are covered by their Executive Order 11246 FAAPs; or (b) creating and maintaining establishment-based Section 503 and VEVRAA AAPs for each of their establishments. Contractors must inform OFCCP which method they will use to comply with its Section 503 and VEVRAA affirmative action obligations during the FAAP negotiation or certification process. The method chosen by the contractor will be recorded in the FAAP Agreement. Under either arrangement, contractors must make their VEVRAA or Section 503 establishment-based AAPs or FAAPs available for review by employees at each of their establishments.

When contractors with approved FAAP agreements are scheduled for compliance evaluations, they must also submit their Section 503 and VEVRAA FAAPs for the functional or business unit under review. If a contractor uses establishment-based AAPs to comply with Section 503 and VEVRAA, it must submit to OFCCP its AAPs for all establishments within the functional or business unit under review. The CO will review all Section 503 and VEVRAA establishment-based AAPs as described in FCCM Chapters 1 and 2.

During the review, the CO must ensure that all employees covered by the functional or business unit are included in the Section 503 and VEVRAA AAP submissions. A contractor using a FAAP for Section 503 and VEVRAA should apply the Section 503 utilization goal on a job group basis, using the job groups in their Executive Order 11246 FAAP. The contractor may apply the VEVRAA hiring benchmark, at its discretion, to each of its job groups or to the functional unit as a whole. A contractor using establishment-based AAPs for Section 503 and VEVRAA, even though it has an Executive Order 11246 FAAP, should apply the Section 503 utilization goal to job groups created in accordance with 41 CFR 60-2.12 or, if it has a total workforce of 100 or fewer employees, by applying the goal to its workforce as a whole, if it chooses to do so. The contractor may apply the VEVRAA hiring benchmark, at its discretion, to each of its job groups or to the establishment as a whole.

5D ON-SITE

When conducting a FAAP compliance evaluation, it may be necessary to conduct on-site reviews at more than one location to evaluate the business functions or lines of business under review. In such circumstances, the CO and his or her supervisor will determine the on-site visits that will be conducted and the composition of each on-site team. Contractors with approved FAAP agreements agree to make personnel and employment records available at the location designated by OFCCP. If it is determined that an on-site review needs to occur outside of the CO's region, the FAAP Branch can coordinate an on-site review within another OFCCP region. The CO will conduct the on-site review as described in FCCM Chapter 2 using the SCER to record investigative findings and conclusions.

5E COMPLIANCE EVALUATION COMPLETION

If the off-site analysis of the data that the CO obtained during the desk audit and on-site review result in no violations being found, the CO should close the FAAP compliance evaluation. However, if there are findings of discrimination or other violations, the CO should proceed in accordance with Chapter 8 and the issuance of a PDN or NOV, as warranted.[299]

The CO must follow FCCM Chapter 8 in each FAAP compliance evaluation that results in a finding of a violation. If the CO issues a CA to correct identified violations, then the CA, closing documents and letters must clearly reflect that the CO conducted a compliance evaluation of a FAAP and Itemized Listing data, and indicate the limited scope of the evaluation.[300] As previously noted, the contractor may also have an establishment-based AAP(s) covering the remainder of its workforce and employment actions that OFCCP did not review as a part of the FAAP review.

[299] See FCCM Chapter 8: Resolution of Noncompliance.

[300] See FCCM Chapter 7 – Employment Discrimination Remedies, and FCCM Chapter 8 – Resolution of Noncompliance.

CHAPTER 6
COMPLAINT INVESTIGATION

6A INTRODUCTION

This chapter outlines the procedures for processing and conducting investigations of complaints alleging discrimination in employment by federal contractors. Preparing for and investigating a complaint differs from conducting a compliance evaluation. The difference is that this investigation is primarily focused on the specific allegations in the complaint. This chapter includes the general principles of complaint processing and investigation planning. It, therefore, focuses on the CO's responsibilities related to investigating and resolving complaints. It describes the CO's responsibility to evaluate the allegations in a complaint to determine the legal and analytical framework for addressing each allegation, to identify data and information to obtain during an investigation, to conduct appropriate analyses, and to develop and provide notification of findings. The chapter also discusses conciliation efforts and enforcement actions.

6B BASES OF COMPLAINT ALLEGATIONS

Employees and applicants may file complaints with OFCCP under any of the laws OFCCP enforces, including complaints alleging discrimination or alleging other violations of OFCCP's laws and regulations. OFCCP processes and investigates some complaints in coordination with the EEOC.

6B01 EXECUTIVE ORDER 11246 ALLEGATIONS

OFCCP accepts complaints alleging discrimination based on any of the protected bases listed in Executive Order 11246,[301] and it may refer or jointly investigate some of the complaints with the EEOC. The Executive Order 11246 regulation at 41 CFR 60-1.24(a) states that OFCCP may refer appropriate complaints to the EEOC for processing under Title VII, as amended. In keeping with a MOU[302] between OFCCP and the EEOC, OFCCP will generally refer individual complaints alleging employment discrimination based on race, color, religion, sex or national origin to the EEOC. COs should refer complaints alleging harassment or retaliation to EEOC, unless the basis for the complaint is sexual orientation or gender identity, or the harassment or retaliation is related to a prior OFCCP complaint or investigation.

---

[301] If a complainant does not allege discrimination, but alleges other violations of EO 11246, such as affirmative action violations, OFCCP may conduct a compliance evaluation using one or any combination of its investigative procedures, such as a focused review. See 41 CFR 60-1.20.

[302] The MOU between OFCCP and the EEOC was first entered into on May 20. 1970, it was revised in 1974, and revised again in 1981 as published at 46 FR 7435 (Jan. 23, 1981). The 1981 MOU was revised in 1999 as published at 64 FR.17664 (Apr. 12, 1999), and most recently updated in November 2011 as published at 76 FR 71029 (Nov. 7, 2011).

Generally, OFCCP retains individual complaints against federal contractors alleging employment discrimination based on sexual orientation or gender identity,[303] and individual complaints alleging discrimination because applicants or employees have inquired about, discussed or disclosed their compensation or that of others. OFCCP may also retain complaints based on a violation of Executive Order 11246 to avoid duplication and ensure effective law enforcement (*e.g.,* when OFCCP is entering a CA with the same contractor to remedy violations found during a compliance evaluation). Finally, OFCCP retains complaints alleging *class or systemic* discrimination on any basis protected by Executive Order 11246.

Whenever a complainant files a complaint of employment discrimination with OFCCP under Executive Order 11246 and the allegations in the complaint also fall within the jurisdiction of Title VII, the Title VII portion of the complaint is deemed dual filed with the EEOC. OFCCP acts as EEOC's agent for the purposes of receiving, investigating and processing the Title VII component of dual filed complaints. OFCCP processes dual filed complaints in a manner consistent with Title VII principles of liability and relief.

6B02 VEVRAA AND SECTION 503 ALLEGATIONS

Like Executive Order 11246, complainants filing under Section 503 or VEVRAA may allege employment discrimination, or other violations of the law or its implementing regulations.[304] For example, a complainant could allege affirmative action or recordkeeping violations, as well as discrimination under Section 503 or VEVRAA.

a. *Complaints filed under VEVRAA.* For VEVRAA complaints, OFCCP retains and investigates all complaints over which OFCCP establishes jurisdiction, regardless of whether they are individual or class complaints. Since none of the laws enforced by EEOC include veteran status as a protected basis, VEVRAA complaints are not dual filed with EEOC. However, if a VEVRAA complaint also contains allegations of age discrimination, OFCCP will bifurcate the complaint, retaining the VEVRAA allegations for investigation, and referring the other allegations to EEOC. In another example, if a VEVRAA complaint also contains allegations of individual discrimination based on race, color, religion, sex or national origin, OFCCP could decide to bifurcate the complaint, retaining the VEVRAA allegations for investigation, and referring the other allegations to EEOC. OFCCP could also opt to retain all the allegations in the complaint for investigation. Finally, OFCCP generally retains and does not bifurcate VEVRAA complaints that also contain allegations of disability discrimination, so long as the disability allegations fall within the jurisdiction of Section 503.

b. *Complaints filed under Section 503.* In contrast to VEVRAA complaints, complaints filed under Section 503 often also fall within EEOC's jurisdiction under Title I of the ADA, as amended and are, thus, dual filed. OFCCP generally retains and investigates all Section 503 complaints over which OFCCP establishes jurisdiction, regardless of whether they are

---

[303] See Directive 2015-01, "Handling Individual and Systemic Sexual Orientation and Gender Identity Discrimination Complaints," stating that OFCCP analyzes these complaints "to determine whether the alleged discrimination occurred on the basis of sexual orientation or gender identity, as well as on the basis of sex, and will coordinate with, and refer complaints to, EEOC on a case-by-case basis."

[304] See 41 CFR 60-300.61(a) and 60-741.61(b).

individual or class complaints. OFCCP acts as EEOC's agent when receiving, investigating and processing complaints that are dual filed under the ADA.

However, OFCCP may choose to bifurcate complaints that allege discrimination based on disability in addition to individual discrimination based on race, color, religion, sex, national origin or age. If the decision is to bifurcate the allegations, OFCCP retains and investigates any disability discrimination and Section 503 affirmative action allegations while referring allegations of individual discrimination based on race, color, religion, sex, national origin or age to EEOC. If the complaint alleges Section 503 affirmative action violations in addition to systemic discrimination based on race, color, religion, sex or national origin, OFCCP would retain the entire complaint and not bifurcate it.

For Section 503 complaints, OFCCP uses legal standards for determining liability, as well as damages and remedies, consistent with those applied under the ADA in determining whether a contractor committed an unlawful employment practice. OFCCP also follows ADA principles when investigating Section 503 discrimination allegations that are not dual filed.

6B03 RETALIATION, INTIMIDATION, AND INTERFERENCE ALLEGATIONS

Individuals or groups may also file complaints alleging retaliation or interference under any of the laws enforced by OFCCP. OFCCP's anti-retaliation regulations prohibit intimidation, threats, coercion, harassment and discrimination against any individual because he or she has engaged in "protected activity." An individual has engaged in protected activity when he or she has:

- Filed a complaint;
- Assisted or participated in any activity related to the administration of any federal, state or local law requiring equal opportunity (*e.g.,* provided information to a CO conducting a compliance evaluation);
- Opposed practices made unlawful by equal opportunity laws (whether those practices were aimed at the person filing the complaint or at another person); or
- Exercised any other rights under OFCCP's laws, or any other federal, state or local law requiring equal opportunity.

Allegations of retaliation may be included in the same complaint with allegations of discrimination or may be filed separately. Retaliation complaints that implicate a Title VII or ADA basis are considered dual filed with EEOC. OFCCP will refer dual filed individual complaints of retaliation to EEOC <u>unless</u>:

- The complainant's protected activity was related to the complainant's participation in the administration of an OFCCP law (*e.g.,* participation in an OFCCP compliance evaluation or complaint investigation); or

- The complainant alleges retaliation because of a complaint previously filed and investigated by OFCCP.

This is a specific example of when OFCCP would retain a retaliation complaint that is related to a discrimination complaint: The complainant alleges discrimination based on gender identity and retaliation. If OFCCP retains the underlying discrimination component of the complaint, it would also retain the retaliation portion of the complaint.

6B04 EXECUTIVE ORDER 13496 INVESTIGATIONS

OFCCP also investigates complaints of noncompliance with Executive Order 13496, which requires contractors to provide notice to their employees of their rights under the NLRA, and include a similar notice in subcontracts and purchase orders. OFCCP and the OLMS share enforcement authority for Executive Order 13496.[305]

6C COMPLAINT RECEIPT AND PERFECTION

OFCCP's regional offices are responsible for "perfecting" complaints and ensuring that a notice is sent to the employer against whom a complaint is filed with the date, place and circumstances of the alleged unlawful employment practice.[306] As such, all complaints received by OFCCP are sent to the appropriate regional office.

6C00 RECEIPT OF COMPLAINTS

Whenever any OFCCP field office receives a complaint, the office must immediately stamp the date of receipt on the complaint, and enter the date and time of receipt into office records. The receiving office, if not a regional office, must immediately send the complaint to the regional office that has geographic jurisdiction over the employer or employer's establishment. COs responsible for complaint perfection use the receipt date to determine whether the complaint was filed on time. Complainants filing under VEVRAA may also file through the DOL's VETS or through the Local Veterans' Employment Representative (LVER) at the local employment service office, who will transfer the complaint to OFCCP.[307]

6C01 WHO MAY FILE A COMPLAINT

Any individual or group may file a complaint. A third party (*e.g.,* a family member, personal representative, or union representative) may also file a complaint on behalf of an individual or a group. As explained in subsection 6D04, a third party may represent the complainant or complainants during the investigation with proper documentation. When a third party files a

---

[305] See Directive 2010-01, "Verification Procedures under E.O. 13496: Notification of Employee Rights under Federal Labor Laws." This directive explains the investigation procedures for complaints alleging noncompliance with Executive Order 13496.

[306] The regulations at 41 CFR 60-1.21 to 60-1.24; 60-300.61; 60-741.61 and 60-742.5 address timeliness issues and the initial processing of a complaint.

[307] If the complainant files with VETS or the LVER and alleges discrimination prohibited by VEVRAA, OFCCP will use the date the complaint arrived at that office to determine timeliness.

complaint, the complaint need not identify by name the person(s) on whose behalf the complaint is filed. However, the third party must then separately provide OFCCP the name, address and telephone number of the person on whose behalf the complaint is filed, in addition to any other information required by OFCCP's regulations, such as documentation of protected veteran status. OFCCP will make every effort to obtain this information during the complaint perfection time frame.

6C02 PROVIDING CONTRACTOR THE 10-DAY NOTICE LETTER

Within 10 calendar days of receiving a complaint, the regional office must also ensure that a letter is sent to the employer against whom the complaint is filed explaining the date, location and circumstances of the allegations (also known as the "10-Day Notice Letter").[308] This letter is sent regardless of whether the perfection process is complete. The particular wording of the letter will depend on whether the complaint has been perfected, whether OFCCP is investigating part or all of the complaint allegations, and whether OFCCP is referring the complaint in whole or in part to EEOC.[309] If the complainant has already filed a Section 503 or Executive Order 11246 complaint with the EEOC or if EEOC has transferred the complaint to OFCCP, no 10-Day Notice Letter is required because EEOC sends a similar 10-day notice for complaints it receives.

The regional office must also ensure that the complainant is notified that the 10-Day Notice Letter was sent to the employer,[310] and that EEOC is notified when OFCCP is referring a complaint, in whole or in part.[311]

6C03 COMPLAINT PERFECTION

The regional office will ensure the complaint is perfected within 15 calendar days of receiving the complaint unless good cause is show for an extension. During complaint perfection, the CO determines the timeliness of the complaint; contract coverage;[312] whether the allegations are covered by any of the laws OFCCP enforces; whether to retain, refer or bifurcate the complaint; and whether all the required elements of a complaint are present.

Complaints alleging discrimination based on race, color, religion, sex, sexual orientation, gender identity, national origin, or based on compensation inquiries, discussions or disclosures, must be filed within 180 days from the date of the alleged discrimination unless the time for filing is extended for good cause. If the complaint alleges a violation based on disability or status as a protected veteran, it must be filed within 300 days unless the time for filing is extended for good

---

[308] FCCM 6D02 describes procedures for corresponding with the employer and complainant.
[309] See Letter L-11 – 10-day Notice to Employer/Contractor.
[310] See Letter L-12 – 10-day Notice to Complainant.
[311] See Letter L-13 – Referral Letter to EEOC (Full or Partial Transfer of Complaint).
[312] To view OFCCP's jurisdictional thresholds, see *https://www.dol.gov/ofccp/taguides/jurisdiction.htm*.

cause. When determining whether to extend the time for filing for good cause, the CO must consult with his or supervisor. [313]

The CO should encourage complainants to complete and sign the OFCCP complaint form authorized by the OMB, Form CC-4, "Complaint Involving Employment Discrimination by a Federal Contractor or Subcontractor" ("Complaint Form").[314] When completed, the Complaint Form contains all the required components of a complaint. However, a complainant is not required to use the Complaint Form in order to file a written complaint, as long as whatever document the complainant submits to OFCCP includes the components described below.

During complaint perfection, COs must ensure the following components are included in the written complaint:

- Name, address and telephone number or email address of the complainant;
- Name and address of the employer allegedly committing the discrimination;
- Description of the alleged discriminatory acts, including the basis or bases of discrimination; and
- Signature of the complainant or the complainant's representative.

Additionally, VEVRAA requires the alleged victim to submit evidence that he or she is a protected veteran. Evidence will usually be a copy of the veteran's "DD-214" form, which is issued by the Defense Department to each veteran upon their separation from the military.[315] If any medical information is needed during perfection or the investigation of the complaint, the CO must request that the complainant sign an authorization to release medical information.[316]

If a CO, after reviewing a complaint, needs clarification or additional information from the complainant to perfect the complaint, they should contact the complainant immediately. Upon completion of complaint perfection, the regional office will determine whether OFCCP will retain and investigate all or part of the complaint allegations for investigation, refer the entire complaint to EEOC, or close the complaint administratively.[317]

---

[313] A few of the possible examples of what might be good cause include, the existence of some extraordinary circumstance that prohibited the complainant from filing before the deadline such as a significant health issue, military deployment, incarceration or possibly being unaware of the discrimination.

[314] See Figure F-5 – Complaint Form. Complainants can find the Complaint Form on the OFCCP website where it is available in several languages.

[315] The DD-214 is the veteran's report of separation from the military and contains information such as the date of release from active duty, type of separation, *e.g.,* honorable, reason for separation and any decorations, medals, badges or campaign awards. See *http://dd214.us/* for more information about the DD-214.

[316] See Letter L-14 – Authorization for Release of Medical Information.

[317] See FCCM 6L04 for procedures on closing complaints administratively.

6D INVESTIGATING THE COMPLAINT

If the regional office decides to retain and investigate complaint allegations, it will assign the complaint to the field office located in the jurisdiction of the establishment or construction site where the alleged discrimination occurred. When transmitting a complaint to a field office for investigation, the regional office will include all attachments to the complaint, all correspondence sent during complaint perfection and a transmittal memorandum. The transmittal memorandum and the complaint will indicate under which law(s) the complaint is filed (*i.e.*, Executive Order 11246, Section 503 and/or VEVRAA) and the basis or bases for the complaint (race, color, religion, sex, sexual orientation, gender identity, national origin, disability, status as a protected veteran, retaliation, or inquiring about, discussing or disclosing pay).[318]

After receiving the assignment, the CO will begin to investigate the complaint.

6D01 TIMELY COMPLETION OF INVESTIGATION

The field office must take all necessary steps to complete the complaint investigation within 60 calendar days of receiving the assignment from the regional office. The Regional Director may grant an extension of this period if the field office shows good cause. The extension, if granted, should not exceed 60 days; this results in a total of no more than 120 calendar days to complete the complaint investigation. Examples of good cause include, but are not limited to, complex legal issues, unavailability of witnesses, untimely responses from the contractor or the number of complainants. The regional office must document the request for extension as well as the disposition of that request.

6D02 CORRESPONDENCE

The CO should address all letters, including the 10-Day Notice Letter, concerning a complaint to the senior official at the appropriate contractor establishment, or to the contractor's authorized representative,[319] with a copy for the CEO at the corporate address, except when the contractor is a single location establishment. The CO should send the letters by certified mail, return receipt requested and retain the documentation certifying receipt of the correspondence.

For the complainant or the complainant's authorized representative, the CO will send correspondence related to the complaint via certified mail, return receipt requested, facsimile or email. If by facsimile or email transmission, the CO should take steps to ensure confidentiality. The CO should maintain documentation that certifies the correspondence was received.

---

[318] If the complaint alleges noncompliance with EO 13496, the CO should follow the procedures described in Directive 2010-01, "Verification Procedures under E.O. 13496, Notification of Employee Rights under Federal Labor Laws, and the Department of Labor's Implementing Regulations at 29 C.F.R. Part 471," June 15, 2010.

[319] See FCCM 6D04.

6D03 NOTIFYING THE CONTRACTOR AND COMPLAINANT THAT OFCCP WILL INVESTIGATE THE COMPLAINT

At the beginning of the investigation, the CO will provide the contractor notice that the complaint is being investigated by OFCCP and include a full copy of the complaint with the notice, except to the extent it contains the types of information described below.[320] The CO must also notify the complainant that OFCCP is investigating the complaint and include a copy of the redacted complaint that was provided to the contractor.[321]

The CO will redact the following information so that the remaining text reads as smoothly as possible.

- The name and other information that would easily identify someone other than the complainant who might suffer retaliation, be construed as an informer, or suffer embarrassment or other unwarranted invasion of privacy.
- Obscene or inflammatory language, unless it is relevant to the allegations.
- Names and allegations against more than one company. The CO should delete the name and allegations against company #1 from the complaint copy provided to company #2, and vice versa.
- Identifying characteristics of individuals in a third-party complaint (*e.g.,* description of unique characteristics, unique job title or position) if the individual has not signed the complaint or authorized release of his or her identity.

However, if the necessary redactions are so extensive as to make the complaint incomprehensible, the CO may prepare a complaint summary to forward to the contractor.

6D04 COUNSEL OR OTHER REPRESENTATION

A contractor or complainant may designate an attorney or other representative as his or her contact person with OFCCP prior to or during a complaint investigation. Such designation shall be at the initiation of the contractor or complainant being represented.

a. Written Designation. The designation of a representative must be in writing by the contractor or complainant to an OFCCP District or Regional Director. Either the complainant or the senior official of the contractor must sign the written designation letter. If the field office receives notification of the designation in a form other than in writing, the CO should contact the requester (contractor or complainant) and advise them of the necessary written designation letter. The correspondence should provide the name, address and telephone number of the representative. In addition, the correspondence should clearly describe the extent of the representative's authority, specifically:

---

[320] See Letter L-15, Letter Notifying Contractor of Investigation.
[321] See Letter L-16, Letter Notifying Complainant of Investigation.

- If all contacts, including routine contacts to make appointments or to clarify submitted data or other information, should go through the representative;

- If the representative has the authority to negotiate settlements for the contractor or complainant; and

- If the CO should mail correspondence to the representative only, or if he or she should mail copies to the contractor or complainant as well.

The CO should send to the highest-ranking management official of the company a courtesy copy of all substantive documents that this Manual requires to be mailed to the contractor, even if the contractor designates a representative.

b. Duration of Designation. Unless the contractor or complainant indicates otherwise in the written designation letter, the designation shall only be for the duration of the complaint investigation and any applicable enforcement period.

6D05 CASE FILE

Upon receiving a complaint to investigate, a CO establishes a case file. COs should maintain all documents, correspondence, interview notes and records of contact, including emails and telephone calls, pertaining to the complaint in this file. When the investigation is complete, the case file should contain sufficient documentation to support either an enforcement recommendation based on a finding of a violation(s) or a decision to close the complaint investigation based on a finding of no violation.

a. Maintenance of the Case File. Regarding the maintenance of records, COs should follow the general principles below:

- Date all telephone, email and written communications; identify who participated in the communication by name and position; and accurately reflect any agreed upon commitments.

- Keep all documents from the complainant, contractor or others in their original condition. COs should make copies and label documents as copies if they need to make alterations to or notes on a document.

- Use the case file to document and maintain all interview statements, whether the interview is conducted in person or by telephone, or some other electronic means. COs should record statements or observations as soon as possible after the conclusion of the interview or observation. The interview statement must note the name and title or position of the person conducting the interview, the name and position of the person interviewed, when and where the interview took place and the names of any other people who may have been present (*e.g.,* legal counsel, a personal representative or interpreter).

- Record newly obtained information or observations in clearly legible writing or, preferably, in an electronic format. COs should type handwritten notes for the case file.

- Create and clearly label a section in the case file for all evidence, including evidence that supports conclusions the CO draws regarding the complaint allegations. Supporting evidence may include CO notes, worksheets, contractor data or documents and any other materials relating to an allegation.

- Keep all records and information regarding a complaint investigation confidential.

b. Case File Contents. The case file will contain seven separate files labeled as follows and containing the listed contents.[322] COs should cross reference the files, as appropriate. Only the final versions of documents created by the CO or other OFCCP staff should be included in the case file, not drafts of documents.

1. *Complaint and Data Submitted by the Complainant.* This file will contain the complaint (*e.g.,* the completed CC-4 form) and any documentation or information the complainant submitted, including the envelope used to mail the complaint. Documents may include, for example, any informal letter of complaint, list of witnesses, and supporting documents. These items should be on the right side of the file folder.

   On the left side of the file folder, the CO should place a copy of the complaint report sheet for the establishment that he or she obtained from CMS (*i.e.*, the CC-58 report). Underneath this form, the CO should include any CMS extensions requested during the investigation and responses.

2. *Case Chronology, Correspondence and Meeting Notes.* This file contains all correspondence and any attachments. This includes, for example, any materials from contacts with the contractor, union, witnesses, and consultants. It may also include memos to file, but not investigative notes the CO prepared and used in reaching factual and legal determinations. Correspondence should be in chronological order with the most recent on top.

   The Case Chronology Log (*i.e.*, the CC-53 form) will be attached to the left side of the file and placed on top. The CO shall maintain the Case Chronology Log electronically, as described in FCCM 1B01.[323]

3. *Investigative Material.* This file will contain the investigative materials. The CO should index and tab the materials. The file should contain the following materials:

   - The Investigative Plan;

   - The Investigative Report;

   - All interview statements;

   - The CO's investigative notes;

---

[322] See Appendix A-8 – Index for a Complaint File.
[323] See Figure F-2 – Case Chronology Log.

- Any statistical evidence;
- Any comparative evidence; and
- Any anecdotal evidence.

These materials may be voluminous. If so, the CO may appropriately label, tab and index separate folders to contain the materials.

4. *Medical/Veteran Documentation*. This file, organized with an index and tabs, will contain any necessary protected veteran status documentation and pertinent medical documentation, if any. The documents should have labels clearly stating the source of the information (*e.g.,* complainant, contractor third party). The CO must label and treat File 4 Medical/Veteran Documentation as "confidential." The file should contain, where appropriate:

   - Medical releases (these will not be needed in most cases);
   - Proof of protected veteran status under VEVRAA, if VEVRAA allegations are present (such as the DD-214);
   - Proof of disability or of limitations due to a disability, if pertinent to the case; and
   - Work restrictions.

5. *Legal*. This file will contain any documents related to legal activity, including:

   - Notice of Investigation Report (place on top);
   - CA (on top of report, when complete);
   - Solicitor's Opinion;
   - JRC meeting notes and reports;
   - FOIA and Privacy Act determinations;
   - Enforcement recommendations; and
   - Jurisdictional and contract coverage information (on the bottom).

6. *Employment Handbooks, Collective Bargaining Agreement (if applicable) and Miscellaneous*. On the right side of this file, organized by an index and tabs, will be copies of any relevant collective bargaining agreements, employee handbooks, benefits and leave policy materials, and any similar contractor materials. The CO should place any items that are not otherwise listed and contained in other case file sections here.

7. *Historical Review Results*. This file will contain copies of any available closure letters and documents from previous complaint investigations of this establishment. The CO should note pertinent information regarding compliance evaluations of the establishment here, as well as include the closure letter for the current investigation.

   The district office should maintain the historical file indefinitely. If the district office conducts another investigation of the establishment, this file becomes a part of the new investigative file. If the district office is going to retire the case file, the district office should remove and retain the historical file while filing the remainder of the case file.

6D06 OFCCP CMS

The CMS tracks and monitors the processing of complaints filed with OFCCP. COs have specific responsibilities for entering data and information into the automated system. These responsibilities begin with the receipt of the complaint by the regional office and end when the CO closes the complaint file. The COs can find specific instructions in the CMS Manual.

6E TYPES OF COMPLAINT ALLEGATIONS

This section generally discusses the types of complaint allegations that OFCCP may receive and the investigative approach to take. The CO must first determine the investigative framework (*e.g.,* legal theory of discrimination to apply, data to obtain, interviews to conduct, records to review, analyses to perform) to use in addressing the complaint allegations in order to develop the Investigative Plan and interview questions, which are discussed in FCCM 6F – Investigative Plan.

6E00 APPROACH TO INVESTIGATING COMPLAINT ALLEGATIONS

In conducting a complaint investigation, the CO is a neutral fact finder. A complaint is essentially a statement of allegations of discrimination or other violations. The CO conducts an investigation to determine if there is sufficient pertinent evidence to support that a violation occurred or not, in light of the allegations in the complaint. In preparing for and conducting the investigation, the CO must exercise objectivity and thoroughness. The CO must conduct each investigation in an atmosphere of open mindedness and fairness to both parties. The CO should display professional conduct at all times.

a. *Relationship to Compliance Evaluations*. The CO may complete a complaint investigation with or without a compliance evaluation. If, upon evaluating the complaint allegations, or at any time during the investigation of the complaint, the CO obtains information that class, systemic or other issues may be more appropriately addressed by conducting a compliance evaluation (full review, focused review or compliance check), the CO should discuss this issue with his or her supervisor, and obtain national office review and approval prior to expanding the investigation into a compliance evaluation.

b. *Investigative Priority*. The CO should act expeditiously on any complaint that alleges immediate and irreparable harm. For example, a complaint alleging the threat of termination

in retaliation for filing a complaint with OFCCP (or for assisting in an OFCCP compliance evaluation, complaint investigation or enforcement action) requires immediate action.

6E01 INVESTIGATIVE FRAMEWORK

The CO will assess the specific allegation accepted by OFCCP for investigation to determine the framework appropriate for investigating and resolving each allegation. This assessment may require different approaches for each allegation. If there are multiple allegations, the CO will need to determine which framework is appropriate to use in investigating, analyzing and resolving each specific allegation. The CO should develop the Investigative Plan, including interview questions, to reflect each specific allegation and the approach to investigating and resolving it.

When assessing the complaint allegations under any of OFCCP's laws, COs should determine whether the complainant or complainants are being treated less favorably because of a protected basis (*i.e.*, disparate treatment), or whether they are being adversely impacted by a facially neutral policy or procedure that is unjustified (*i.e.*, disparate impact).

a. *Disparate Treatment*. Disparate treatment discrimination occurs when a contractor treats individuals or groups less favorably because of a protected basis. It is necessary to prove intent to discriminate under this theory of employment discrimination. Disparate treatment complaints may include allegations of less favorable treatment regarding employment actions such as hiring, terminations, promotions, compensation, application of selection criteria, family and pregnancy leave issues, or the denial of equal benefits and opportunities, or possibly both.

b. *Disparate Impact*. Disparate impact occurs when a facially neutral policy or procedure, including selection procedures, has an adverse impact on a particular group, and it is not justified by business necessity and its relationship to the job. For example, a complainant may allege discrimination because a contractor has strength, agility, or other physical requirements that exceed the actual requirements necessary to perform the job in question and the requirements negatively impact women substantially more than men. Similarly, a complainant may allege that a contractor's use of criminal records to screen applicants negatively impacts applicants because of their race.[324]

The CO must also determine whether a complaint is individual or systemic in nature. Once these fundamental questions have been answered, the CO will delve into the particular types of allegations raised, such as termination, nonpromotion, demotion, harassment, denial of accommodation and retaliation. The fundamentals for some of these allegations, and more, are described below.

6E02 SYSTEMIC ALLEGATIONS

Under the three nondiscrimination laws OFCCP enforces, a complaint may raise allegations of systemic discrimination, that is, discrimination that affects groups or classes of individuals. The

[324] See OFCCP Directive 2013-02, "Complying with Nondiscrimination Provisions: Criminal Record Restrictions and Discrimination Based on Race and National Origin."

complaint may state these allegations in terms of disparate treatment (a pattern or practice of discrimination that is intentional) or disparate impact (a facially neutral policy or practice that has an adverse impact on a protected group, and is not justified by business necessity and job-relatedness). Also, systemic discrimination may be alleged by an individual or by a class of complainants. COs should note that the allegations may warrant examination using both the disparate treatment and the disparate impact frameworks.

6E03 HARASSMENT

Harassment is a form of discrimination that may take a variety of forms, including offensive remarks about an individual, derogatory speech or actions that are directed at a specific individual or group of individuals, and other unwelcome communication, action or physical conduct. Harassment based on a protected characteristic is illegal when it is so frequent or severe that it creates a hostile or offensive work environment, or when it results in an adverse employment decision (such as constructive discharge or demotion of the victim of harassment). The harasser may be the victim's supervisor, a supervisor in another area, a co-worker or a third party (such as a client or customer).

Sexual harassment is a type of harassment on the basis of sex prohibited by Executive Order 11246. Unwelcome sexual advances, requests for sexual favors, offensive remarks about a person's sex, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission or rejection of such conduct by an individual is used as the basis for employment decisions against the individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.[325]

6E04 RETALIATION AND INTERFERENCE

Retaliation occurs when a contractor takes an adverse action against an individual because he or she engaged in protected activity, *e.g.,* filing a complaint of discrimination or providing information to a CO during a compliance evaluation. Adverse action includes employment actions such as termination, demotion or failure to hire. Other types of actions affecting employment may also be adverse actions. These include threats, including threats to take an adverse action; unjustified negative evaluations or references; or actions such as physical assault, or unfounded civil or criminal charges that are likely to deter a reasonable person from pursuing

[325] See 41 CFR 60-20.8. Harassment based on sex also includes harassment based on pregnancy, childbirth or related medical conditions; and harassment that is not sexual in nature but that is because of sex or sex-based stereotypes.

their rights. Adverse actions do not include petty slights and annoyances, such as stray negative comments that are justified by poor performance or history, or "snubbing" a colleague.

A complaint of discrimination may contain an allegation that retaliation or interference occurred, or the allegation may arise during the course of an investigation, or even after the investigation has concluded. The complainant may be an applicant, employee, former employee or person closely associated with an individual who filed a discrimination complaint, opposed an act of discrimination or participated in a protected activity. If a complainant makes an allegation of retaliation in addition to another allegation of discrimination, a finding that the underlying discrimination did not occur will not defeat the allegation of retaliation. The CO must investigate any allegation of retaliation or interference and make an independent finding as to whether sufficient evidence supports it.

OFCCP applies the same concepts, standards and analyses as EEOC when assessing possible retaliation.[326] Although Title VII's retaliation provision does not expressly prohibit intimidation, harassment and interference as OFCCP's regulations do, EEOC has interpreted retaliation to include these concepts. The ADA and its implementing regulations expressly prohibit such conduct.

6E05 ALLEGATIONS SPECIFIC TO EXECUTIVE ORDER 11246

Executive Order 11246 prohibits employment discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. In addition, Executive Order 11246 prohibits employment discrimination against applicants or employees because they inquired about, discussed or disclosed their compensation or that of others, subject to certain limitations. When OFCCP finds contract coverage, the regional office assigns Executive Order 11246 complaints involving class or systemic issues to a field office for investigation. The regional office also assigns individual complaints alleging discrimination based on sexual orientation or gender identity, and individual complaints alleging discrimination for asking about, discussing or disclosing pay to the field for investigation.[327] Executive Order 11246 complaints may include individual disparate treatment claims (*e.g*., a claim that an individual was unlawfully terminated, demoted, not hired, not promoted, harassed), allegations of systemic discrimination, or denial of accommodation for religious observances or practices. The regional office will generally refer individual complaints alleging employment discrimination based on race, color, religion, sex or national origin to EEOC pursuant to the EEOC and OFCCP MOU.

6E06 ALLEGATIONS SPECIFIC TO DISABILITY COMPLAINTS

Section 503 prohibits employment discrimination on the basis of disability. Complaints may include a variety of allegations that require determination of the legal and analytical approaches to be used in conducting the complaint investigation. Allegations may include individual disparate treatment claims (*e.g.,* a claim that an individual was unlawfully terminated, demoted, not hired, not promoted, harassed); issues of systemic discrimination; denial of reasonable accommodation; and/or the use of medical inquiries, examinations, and mental and physical job

---

[326] Appendix A-9 – Retaliation and Interference: Complaint Processing Outline and Checklist.
[327] See FCCM 6B.

qualification standards. In examining complaint allegations filed by a disabled veteran, the CO should determine if the complaint also raises issues under VEVRAA.[328] Complainants filing under Section 503 or VEVRAA based on disability may also allege any violation of the law or its implementing regulation unrelated to discrimination.[329] Disability complaints may be "dual filed" under both Section 503 and the ADA.[330]

a. *Not Making Reasonable Accommodation*. An issue unique to disability complaints (and complaints from disabled veterans) relates to the provision of reasonable accommodation. Section 503 requires that a contractor provide reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability unless the contractor can demonstrate that doing so would impose an undue hardship on the operation of the business. As a matter of affirmative action, if an employee with a known disability is having significant difficulty performing his or her job, and it is reasonable to conclude that the performance problem may be related to the disability, the contractor must confidentially notify the employee of the problem, and inquire whether the problem is related to the disability and, if so, whether the employee needs a reasonable accommodation. A reasonable accommodation can include changes in the work environment, work processes or procedures so that a qualified individual with a disability or disabled veteran can apply for a job, perform the essential functions of a job or enjoy the benefits and privileges of employment. Reasonable accommodation may include a variety of modifications, including making the workplace accessible for an individual with mobility impairment and providing a reader or interpreter for someone who is blind or hearing impaired.

   During the course of an investigation of a failure to accommodate claim, a contractor may assert that it did not provide a reasonable accommodation because significant difficulty or expense would have been incurred if it did so. When determining whether the contractor has proved that providing an accommodation would have caused it undue hardship, the CO will consider several factors:

   1. The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding.

   2. The overall financial resources of the facility or facilities involved in the provision of the accommodation, the number of persons employed at such facility, and the effect on expenses and resources.

   3. The overall financial resources of the contractor, the overall size of the contractor's business with respect to the number of its employees, and the number, type and location of its facilities.

---

[328] COs should note that in offering employment or opportunities to individuals with disabilities and protected veterans, it is unlawful for a contractor to reduce the amount of compensation offered because of any income based upon a disability-related pension or other disability-related benefit the applicant or employee receives from another source.

[329] See FCCM 6E07 – Allegations Specific to VEVRAA (Non-Disability) Complaints.

[330] See FCCM 6B and 41 CFR 60-742.5 - Processing of Complaints Filed with OFCCP.

4. The type of operation or operations of the contractor, including the composition, structure and functions of the work force of the contractor; and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the contractor.

5. The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

If the CO concludes that the contractor has proved that a specific accommodation would impose an undue hardship, the CO must examine whether there are other potential accommodations available that would not have caused undue hardship.

b. *Medical Examinations and Inquiries.* Aside from offering applicants the opportunity to voluntarily self-disclose as a person with a disability, Section 503 generally prohibits contractors from asking applicants disability-related questions or questions that are likely to elicit information about a disability prior to a conditional offer of employment. The law also prohibits contractors from conducting or requiring medical examinations of applicants until after a conditional offer of employment is made. For example, job applications may not contain medical inquiries or questions about disability, including whether an applicant will need a reasonable accommodation if hired. Disability-related inquiries and medical examinations of employees, such as return-to-work exams and periodic physicals, are prohibited unless they are job-related and consistent with business necessity. A complainant may allege that a contractor asked an unlawful disability-related question or conducted an unlawful medical exam whether or not he or she has a disability. Exceptions to these general prohibitions are listed below.

1. *Invitation to self-identify.* Contractors are required to invite applicants and employees to self-identify as an individual with a disability for affirmative action purposes, following the regulatory procedures specified in 41 CFR 60-741.42.

2. *Acceptable pre-employment inquiry.* Contractors may make pre-employment inquiries into the ability of all applicants to perform job-related functions. They may also ask all applicants to describe or demonstrate how – with or without reasonable accommodation – they will be able to perform job-related functions. Other inquiries could also be made if they are for the purpose of taking affirmative action to recruit and hire individuals with disabilities.

3. *Employment entrance examination.* Contractors may require a medical examination and/or ask disability-related questions after making a conditional offer of employment to a job applicant and before the applicant begins his or her employment duties, as long as this is done for all entering employees in the same job.

   Such entrance examinations or inquiries do not have to be job-related and consistent with business necessity. However, if a contractor uses the results of the exam or inquiries to screen out applicants on the basis of disability, the contractor must demonstrate:

- That the exclusionary criteria used are job-related and consistent with business necessity; and

- That the standard cannot be met nor performance of the essential job functions accomplished, even with reasonable accommodation.[331]

4. *Examination of employees*. Contractors may require medical examinations and/or disability-related inquiries of employees only if they are job-related and consistent with business necessity.

5. *Voluntary medical examinations and inquiries*. Contractors may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site. These voluntary exams and activities do not have to be job-related and consistent with business necessity.

c. *Confidentiality of Medical Information*. A complainant may allege that the contractor breached confidentiality of medical information. Whenever a contractor inquires about an applicant's or employee's medical condition, or conducts a medical examination, the contractor must keep all resulting information in a separate, confidential medical file. The confidential medical records must be maintained separately from information on self-identification, which is kept in a data analysis file. For instance, if an employee voluntarily informs a contractor that he or she has a disability and requires a reasonable accommodation, this information must be kept confidential in the employee's medical file, whereas the employee's response to the invitation to self-identify (*i.e.*, Form CC-305) would be maintained in the contractor's data analysis file.

   The contractor must keep the medical information confidential with three exceptions:

   - Supervisors and managers may be informed regarding necessary restrictions on the work or duties of applicants and employees and necessary accommodations.

   - First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

   - Government officials engaged in enforcing OFCCP's laws or the ADA shall be provided information relevant to an investigation or compliance evaluation on request.

d. *Mental and Physical Job Qualification Standards*. Contractors subject to Section 503 or VEVRAA may not use qualification standards, employment tests or other selection criteria that exclude an individual with a disability or class, or individuals with disabilities on the basis of disability, or individuals on the basis of their status as protected veterans, unless the selection criteria are job-related and consistent with business necessity. Selection criteria

[331] If the contractor withdrew a job offer from an individual who satisfied only the "regarded as" prong of the definition of "disability" (*i.e.*, the individual did not also have an actual disability or a record of disability), the individual would not be entitled to receive reasonable accommodation and therefore would have to be able to perform all job functions without reasonable accommodation. See 41 CFR 60-741.2(s)(4).

that concern only the performance of a marginal function would not be consistent with business necessity, and the contractor may not exclude a qualified individual with a disability simply because a disability prevents him or her from performing a marginal function. A selection criterion that concerns an essential function may not be used to exclude an individual with a disability if the individual could satisfy the criterion with a reasonable accommodation.[332] In such a situation, the contractor should provide the reasonable accommodation needed unless it can show that doing so would impose an undue hardship.

It is also unlawful for contractors to use a qualification standard, employment test or other selection criterion based on an individual's uncorrected vision unless the standard, test or criterion is shown to be job-related and consistent with business necessity. Individuals wishing to challenge a contractor's use of a standard, test or criterion based on uncorrected vision do not need to have a disability. These individuals only need to show that they were adversely affected by the application of the standard, test or other criterion.[333]

e. *Relationship or Association with an Individual with a Disability*. A complainant may allege that the contractor discriminated against him or her because of the known disability of an individual with whom the complainant has a relationship or association. Anyone can raise this claim; a complainant making such an allegation need not have a disability or allege that the contractor regarded him or her as having a disability. Rather, the complainant need only allege that he or she was denied an EEO or benefit because of his or her relationship with one or more persons who have a disability. Most often, the individual with whom the complainant has a relationship will be a family member, such as a child, spouse or parent, but the law applies equally to business, social and other types of relationships.

6E07 ALLEGATIONS SPECIFIC TO VEVRAA (NONDISABILITY) COMPLAINTS

VEVRAA prohibits employment discrimination on the basis of one's status as a protected veteran. The regulations specify the specific protected categories of veterans: disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and Armed Forces service medal veterans. In reviewing a complaint filed under VEVRAA and in discussing it with the complainant, the CO should clearly distinguish whether the complainant believes the alleged discrimination was based on his or her status as a disabled veteran, or based on one of the other specific categories of protected veterans. If the allegation is based on the complainant's status as a disabled veteran, the CO should follow the procedures for a disability complaint.[334] The complaint may contain allegations of individual disparate treatment (*e.g.,* a claim that an individual was unlawfully terminated, demoted, not hired, not promoted or harassed) or systemic discrimination based on the complainant's status as a protected veteran. Complainants filing under VEVRAA may also allege any violation of the law or its implementing regulations unrelated to discrimination. For instance, under VEVRAA, contractors must list employment

---

[332] 41 CFR 60-300.21(g) and 60-741.21(a)(7). In addition to this nondiscrimination requirement which applies to all types of selection criteria, contractors subject to the affirmative action requirements of Section 503 or VEVRAA have an obligation to periodically evaluate the impact of any mental and physical job qualification(s) to determine if their use tends to screen out qualified individuals with disabilities or disabled veterans. See 41 CFR 60-300.44(c) and 60-741.44(c).

[333] 41 CFR 60-741.21(a)(7)(ii).

[334] See FCCM 6E06 – Allegations Specific to Disability Complaints.

openings with the appropriate ESDS where the openings occur.[335] Contractors must list all employment openings except for executive and senior management positions, positions that will be filled internally, and jobs lasting three days or less. Typically, the location of a job opening, or the location to which the employee must report for work is where the opening "occurs." However, when a vacancy announcement indicates that the opening is for a remote job to be performed entirely by telework, there is no fixed place where the job "occurs." The contractor may, therefore, satisfy the job listing requirement for a remote job by listing the opening with an ESDS in any area where qualified candidates might be found. Where the vacancy announcement indicates that the job may be performed either from a specified duty station or remotely, the contractor must list the job with the ESDS where the duty station is located, but may also list the opening with any other ESDS it determines is appropriate. A complainant may allege that the contractor is not complying with this mandatory job listing requirement.

Complaints alleging discrimination on the basis of status as a protected veteran may also include veteran-related issues that OFCCP is unable to address. When perfecting the complaint, the regional office will refer these allegations to the appropriate enforcement office. If the complainant raises these allegations at a later point in the process, the CO may refer the complaint allegations to the appropriate office or work in coordination with the other enforcement office, as appropriate.[336] For example, a complainant may indicate that he or she has a re-employment issue that falls under the Uniformed Services Employment and Reemployment Rights Act (USERRA), which is administered by the DOL's VETS.

6E08 EQUAL OPPORTUNITY CLAUSE AND RECORDKEEPING REQUIREMENTS

During the course of a complaint investigation, a CO may find that the contractor has not met its Executive Order 11246, Section 503 or VEVRAA equal opportunity contract clause obligations other than nondiscrimination (*e.g.,* failing to post required notices), or that recordkeeping or other regulatory violations exist. If so, the CO should conduct appropriate inspections and examine records to discuss these concerns with the contractor. If the contractor does not correct these violations, the CO should prepare a CA to address these violations.[337]

6E09 NOVEL ISSUES

Novel issues are those that are unfamiliar, unique or fall outside the norm. Periodically, the national office will identify certain novel issues and develop specific procedures to address them. COs may encounter novel issues in the course of complaint investigations, as well as during compliance evaluations.[338] When reviewing complaint allegations, the CO should identify whether the complaint raises any novel issues. In these instances, the CO should discuss the identified novel issues with his or her supervisor before proceeding.

---

[335] 41 CFR 60-300.5.

[336] See "Memorandum of Understanding: Office of Federal Contract Compliance Programs and the Veterans' Employment and Training Service," dated May 20, 1997, that addresses the agencies' coordinated efforts in serving veterans.

[337] See FCCM Chapters 1 and 2 for discussions on the equal opportunity contract clause and recordkeeping requirements.

[338] See FCCM 1A07 – Novel Issues.

6F INVESTIGATIVE PLAN

Once the CO identifies the analytical framework needed to investigate the complainant's allegations, the CO must develop the Investigative Plan. The Investigative Plan will serve as a checklist or "road map" for the investigation. While the Investigative Plan may not identify every step along the way, it should contain the major actions to take. The Investigative Plan should incorporate the investigative framework for each allegation, list the data to obtain and identify the interviews to conduct (and specific questions to ask). The Investigative Plan should reflect the logistics for the on-site investigation, such as the OFCCP staff members who will participate in the on-site review and the dates for the on-site review.

The Investigative Plan should include a complete list of the allegations in the complaint and a summary list of all interviewees, interview questions, and data and information needs. Specific to each allegation, the elements the CO should include in the Investigative Plan are below.

- Statement of the allegations and the nature of the allegations (*e.g.,* systemic, individual disparate treatment in promotional opportunity, denial of reasonable accommodation, harassment);
- Interview of the complainant regarding the specifics of the allegations;
- Interviews of management officials (listed by name or position) and the issues to address;
- Interviews of nonmanagement individuals (listed by name or position) and the issues to address;
- Interviews of witnesses the complainant has identified and the issues to address;
- Specific records and materials to review and analyze;
- Analyses to conduct;
- On-site investigation (agreed upon date); and
- Contact with third parties, when appropriate.

6G INTERVIEWING THE COMPLAINANT BEFORE ON-SITE INVESTIGATION

After reviewing the written complaint, the CO must discuss it in depth with the complainant to ensure that he or she has sufficient information to understand the complaint allegations. Before proceeding with the on-site investigation, the CO should contact each complainant to establish a mutually agreeable time and place to conduct an interview. The CO should conduct the interview in person, either in the OFCCP office or at an off-site location, unless compelling circumstances preclude doing so. In these instances, the CO may conduct the interview by telephone. If the complainant resides outside the area covered by the field office, the CO and his

or her supervisor should coordinate with the regional office where the complainant is located. If no personal interview takes place at any time during the investigation, the CO should record this fact and the reason for it. The CO must follow the procedures for conducting interviews, explained below in FCCM 6I02.

The CO should prepare an Interview Plan containing specific questions tailored to obtain detailed information regarding the allegations and to identify sources of evidence necessary to support or refute the complainant's allegations. In addition to the types of allegation-specific questions discussed in FCCM 6I03, some examples of the types of information to consider are:

- Name(s) of contractor official(s) who participated in the alleged discrimination, and those who were decision makers involved in the alleged adverse action;
- Name(s) of employee(s) or others who may have witnessed the alleged act(s) of discrimination;
- Detailed circumstances surrounding the act(s) (*e.g*., dates, locations, description of actions taken or failure to take action when needed, possible witnesses);
- Description of the contractor's personnel policies and practices related to the employment action at issue;
- Explanation of why the complainant believes that the act(s) was discriminatory;
- Explanation from the contractor to the complainant for any action taken by the contractor;
- Documentation related to the allegations of discrimination, such as personnel policies, job advertisements, job descriptions, written disciplinary warnings, performance appraisals; and
- Data and documents necessary to conduct appropriate comparative or statistical analyses.

After conducting this interview, the CO will assess the complaint allegations to determine the sufficiency of the information provided by the complainant to support the complaint allegations (*e.g.,* is the complainant protected, is there evidence that discrimination may have occurred, was the contractor aware of the complainant's protected status, was there an adverse action). Because each complaint is based on a unique set of factual circumstances, the CO should gain an understanding of the nature of each allegation and why the complainant(s) believes that discrimination occurred.

6H OBTAINING DOCUMENTARY EVIDENCE AND RECORDS PRIOR TO ON-SITE INVESTIGATION

In the initial stage of the complaint investigation, the CO should take steps to gather information about the contractor's complaint and compliance evaluation history, and other documents.

6H00 HISTORICAL DOCUMENTATION

The CO should query the EIS to determine if there have been any prior compliance or complaint investigations of the contractor establishment. The CO will need to obtain and review copies of any investigative reports, closure letters, CAs, or other documentation generated as a result of such compliance or complaint investigation.

The CO should also contact and make a written request to the EEOC, the Departments of Justice and State, [339] VETS in the DOL, and state and local FEP agencies that are responsible for enforcing state and local nondiscrimination laws. The inquiries would be to determine whether there are any complaints against the contractor. If obtained, the CO should include this information in the case file and incorporate it, as appropriate, in the Investigative Plan.

If the complainant indicates that he or she has filed an EEO grievance or complaint with the contractor or union, the CO should obtain a copy of the grievance or complaint from the complainant. Upon making a data request of the contractor, the CO should request any documentation related to the grievance/complaint, complaint investigation and, if applicable, contractor findings and remedy.

If the CO finds that the EEOC is conducting an ongoing investigation, the CO should obtain adequate information to determine whether the EEOC has exercised jurisdiction over some or all of the allegations over which OFCCP would also have jurisdiction and is proceeding with an investigation of the same. Upon verifying this information, the CO should discuss this with his or her supervisor.

6H01 POLICIES AND PRACTICES

The CO should obtain copies of all documents that explain any policy or practice bearing on the allegations in the complaint. If a practice at issue is not in writing or the written material is not current, the CO should request that the contractor provide a written statement of facts or conditions currently in effect, or identify a manager or supervisor who can discuss the practice.

6H02 OTHER DOCUMENTS RELEVANT TO THE COMPLAINT ALLEGATIONS

The CO should obtain copies of any written materials that are relevant to the complaint. The nature of the complaint allegations will determine the nature of the documents the CO needs to obtain. For example, in a complaint alleging discriminatory discharge on the basis of disability, which the contractor states was due to poor performance, the CO would obtain documents such as the following: copies of policies and procedures for performance evaluations and terminations; material related to any reasonable accommodation requests and their disposition; any documentation showing whether the poor performance is attributable to the denial of a reasonable accommodation; a copy of the complainant's personnel file, including his or her performance evaluations; and copies of other similarly situated employees' files and performance evaluations, in order to conduct a comparative analysis. A similarly situated

[339] See Letter L-17, Inquiry Letter to U.S. Department of Justice or the U.S. Department of State.

employee could be a nondisabled individual who received a poor performance rating and was, or was not, subject to discharge.

6I ON-SITE INVESTIGATIONS

Before going on-site, the CO should ensure that he or she has fully reviewed the complaint and the contractor's compliance history and developed an Investigative Plan. The CO should provide written notice of the on-site investigation to the contractor. During the on-site investigation, the CO and other OFCCP staff members should follow the Investigative Plan. However, the CO should make appropriate changes to the Investigative Plan and implement these changes if he or she learns new information during the investigation indicating that other issues may exist. For example, a complainant may raise an allegation of retaliation during the course of the investigation that was not in the original complaint. If the CO has any concerns about making changes to the Investigative Plan or approach, the CO should discuss these concerns with his or her supervisor.

6I00 NOTIFYING THE CONTRACTOR OF THE ON-SITE INVESTIGATION

When the Investigative Plan is complete, the CO should arrange with the contractor for the on-site investigation. Generally, the on-site investigation should, at a minimum, consist of a lead CO and another CO to assist in fact finding. The CO should telephone the contractor and speak with the individual who will represent the contractor during the on-site investigation. The CO should advise the representative that:

- An entrance conference with the facility's senior officer or designee will take place in order for the CO to outline the investigative process, to explain what will be done on-site and to estimate how many days the on-site investigation may take;
- Identified records should be available for review and should be as specific as possible; and
- Management employees, by name and position or title, should be made available for interviews.

The CO should establish a mutually agreeable date for beginning the on-site investigation. A letter confirming the on-site investigation date or dates must be sent.[340]

6I01 ON-SITE INVESTIGATION: ROAD MAP

a. General. The CO must conduct the on-site investigation in a manner that conveys the objectivity and fact finding intent of the CO. The focus of the CO's activity must be on the complainant's allegations and any contractor actions that gave rise to them. The interviews and review of records should provide information clearly related to the issues raised in the complaint. The CO will make note of any other compliance concerns that he or she observes

[340] See Letter L-16 – Confirmation of Onsite Investigation.

or is aware of, as discussed below.

For each on-site investigation, the CO will use the appropriate framework to address the allegations by gathering data and by conducting interviews. The Investigative Plan should reflect the data to obtain and the interviews to conduct. The CO should follow this "road map" to conduct the on-site investigation.

b. *Entrance Conference*. The entrance conference with the facility's senior official or designee sets the stage for the entire investigation. It is important for the CO – as a neutral fact finder – to be well organized and nonjudgmental. The CO should discuss: the investigative process (including what will actually occur on-site), an estimate of the length of the visit, and a mutually agreeable date and time for an exit conference. Since the CO previously provided the contractor with a copy of the complaint and informed the contractor of the relevant law(s), there may be no need for the CO to repeat that information. However, the CO should be prepared to respond to any questions regarding the complaint allegations and should ensure that the contractor understands the allegations.

   The CO should inform the contractor that Executive Order 11246, Section 503 and VEVRAA implementing regulations prohibit interference and intimidation including threats, coercion, harassment and discrimination of any individual in the exercise of his or her rights protected under OFCCP enforced laws. Such protected rights include filing a complaint; assisting or participating in an investigation, compliance evaluation, hearing or any other activity related to the administration of Executive Order 11246, Section 503 and VEVRAA or other EEO laws; opposing any act or practice that violates any of these EEO laws; or exercising any other right afforded them by these laws. During the entrance conference, the CO must also advise the contractor of the need to conduct confidential employee interviews. In that discussion, the CO must make it clear that contractor representatives are not permitted to be present during nonmanagement interviews or during management interviews when it is determined that the manager is not speaking on behalf of the company.

c. *Facility Inspection*. If appropriate, the CO should conduct an inspection of the contractor's establishment during the early stages of the on-site investigation. By inspecting the establishment/facility, the CO will be able to observe, among other things, the layout of the facility, what work employees may perform in the location, whether there may have been possible witnesses to an event, whether there is any display of graffiti, and whether there is inappropriate material displayed. The CO should note, and possibly diagram, any physical setting/location identified in the complaint. The CO should also note other observations, as appropriate. For example, in investigating a class complaint alleging discrimination on the basis of sex, the CO should note the presence or absence of women in the work area or job positions at issue. When appropriate, the CO may photograph the location he or she is inspecting. If the contractor objects to the CO taking photographs, the CO should discuss the matter with his or her supervisor.

d. *Required Notices and Postings (Executive Order 11246 and Executive Order 13496)*. During the on-site investigation of a complaint, the CO also has the opportunity to verify that the contractor is in compliance with required notices and postings. Executive Order 11246 requires that the contractor conspicuously display the "EEO is the Law" poster, and any

required supplements to that poster. The Pay Transparency Nondiscrimination Provision must also be disseminated to employees and applicants, either by electronic posting or by posting copies in conspicuous places. All of these postings notify applicants and employees that federal law protects applicants and employees from various kinds of discrimination. Executive Order 13496 requires that the contractor post notice of employee rights under the NLRA. The NLRA guarantees employees the right to organize and bargain collectively with their employer. The CO should inspect such areas as break rooms, personnel offices, common areas and employee bulletin boards for the required postings.

e. *Information Gathering.* The CO's primary responsibility during an on-site investigation is gathering information by conducting interviews with appropriate management officials and witnesses, and requesting relevant contractor records. This part of the on-site investigation is explained in more detail below in FCCM 6I03.

f. *Exit Conference*. Upon completing the on-site investigation, the CO should conduct an exit conference with the facility's senior official or designee (preferably the same person who was at the entrance conference). At this meeting, the CO should present a summary of any observed violations and should document any rebuttal arguments made by the contractor. The CO should emphasize that the *findings discussed during the exit conference are preliminary*, are not binding on OFCCP, and that OFCCP will not draw final conclusions until the CO can complete analyses of all the data and can affirm or refute each allegation. The CO should inform the contractor of the approximate length of time it will take to complete the off-site analysis, prepare the Investigative Report and issue the Notice of Results of Investigation (NORI) (see FCCM 6K). The CO should also remind the contractor that the law prohibits retaliation and interference. COs should also inform contractors that the exit conference is not necessarily the end of the fact-finding and that more information may be requested, if necessary.

6I02 INTERVIEW PROCEDURES

a. *General*. This section reflects current OFCCP policies regarding the mechanics of the interview process, but it does not teach COs how to interview witnesses. Throughout the investigation, including interviewing, the CO must maintain a high degree of objectivity and professionalism.

b. *Interview Plan*. As a part of the On-Site Plan, the CO must develop appropriate interview questions and identify specific individuals to interview regarding each identified potential problem area or compliance issue. Each planned interview or group of interviews should have an Interview Plan that indicates the topics the interview will address and spells out the initial questions the CO plans to ask. Interview Plans will vary depending on whether the interviewee is a manager, other employee, or unsuccessful candidate for hire, among other considerations. If there is an individual that the CO identified for interview but did not interview, the CO will make a note in the case file as to why the interview did not take place.

c. *Informing the Interviewee*. The CO will tell each interviewee, at the outset of an interview, that:

- The CO will show the interviewee his or her statement containing the answers to the questions asked during the interview; and
- The CO will ask the interviewee to sign his or her statement.

The CO will inform each interviewee that knowingly providing false or inaccurate information is unlawful and will explain that the following phrase is included in the interview notes where the interviewee signs:

"I have read the above and it is true and accurate to the best of my knowledge."

In addition, the CO must inform interviewees that the interview is kept confidential to the maximum extent possible. The CO must also inform all interviewees, regardless of their position with the contractor, that it is unlawful for the contractor to intimidate them or take retaliatory action against them for participating in an interview.

d. *Contractor Representative Present at Interviews*. When the CO conducts interviews with nonmanagement personnel, the contractor does not have the right to have a representative present. However, when the CO conducts interviews with upper level managers and directors that speak for or make decisions on behalf of the company, the contractor may have an attorney or other representative present. If the contractor wants a representative present during management interviews, the CO must first obtain written confirmation of the representation, including the contact information for the representative and the scope of the representative's authority.[341] The exception to this practice is when the manager is not speaking for management. An example may be when the manager is a member of a potentially affected group speaking about the potential discrimination or his or her personal experience, or acting as a whistleblower. In that type of situation, the CO may need to contact the employee directly after the on-site investigation to conduct the interview off-site without the contractor's representative present. COs should consult with the RSOL and the national office prior to engaging in these types of interviews.

e. *Employee Representative Present at Interviews*. An employee may request that a personal representative, such as a union representative or personal legal counsel, accompany him or her during the interview. Subject to the limitations described below, this is generally acceptable. However, the CO must discuss the presence of the representative with the interviewee privately to determine whether there may be a conflict of interest or whether the interviewee feels pressured into having the person present. When the employee wants a personal representative present during the interview, the CO must first obtain written confirmation of the representation, including the contact information for the representative and the scope of the representative's authority, if the CO does not already have the written confirmation.

The contractor does not have the right to have one of its representatives present during an employee interview, either as an observer or as the employee representative. If a

[341] See FCCM 6D04 for more details on what to request in the written confirmation of representation. If the CO already has written confirmation of the representative, there is no need to ask for it again.

nonmanagement employee wants a representative present, including a member of management, then OFCCP must honor the request. The CO can and should meet with the employee alone for the limited purpose of confirming that he or she was not coerced into asking for a management representative. The CO must consult with RSOL if there are any questions about the impact of the presence of a third party on confidentiality or privileges.

f. *Preparing Formal Interview Statements*. After a formal interview, the CO must ask each interviewee to read, sign and date an interview statement. Immediately, at the conclusion of the interview, the CO will review the questions asked and the answers given, and obtain confirmation that any direct quotes are accurate and that all paraphrases convey the interviewee's intended meaning. The CO will promptly type the handwritten interview notes using MS Word in order to provide the interviewee with a formal interview statement to sign as soon as possible after the interview. The CO must enter the following phrase above the space where the interviewee will sign on the formal interview statement:

"I have read the above and it is true and accurate to the best of my knowledge."

If the CO cannot print a copy of the interview statement during the on-site investigation, the CO must ask the interviewee to sign and date the CO's interview notes. The CO will mail or email the typed interview statement as soon as possible after the on-site investigation for the interviewee to sign and date. If the interviewee wants corrections made, the CO must incorporate the corrections and resend the statement for the interviewee to sign. The CO maintains records of interview notes and each version of the interview statement in the case file. If an interviewee refuses to sign an interview statement, the CO will record this and the reason(s) for refusal to sign, if known.

g. *Contact Information.* At the conclusion of every interview, the CO must obtain the interviewee's personal mailing address, contact telephone number and email address. The CO must also provide each interviewee with the CO's office contact information in the event the interviewee wants to add anything to his or her statement.

h. *Informal (Unplanned) Interviews*. At any point in the on-site investigation process, a potential witness may approach the CO to provide information related to the review. The CO must make every effort to meet or otherwise interview the potential witness. The CO will follow the interview procedures described in this section.

If, however, the potential witness is unwilling to be interviewed and only wants to provide the information, the CO must document the conditions under which the employee provided the information in a memorandum. For example, the CO records that the employee provided the CO with a document, briefly describes and attaches the document to the memorandum, and indicates in the memorandum that he or she was unwilling to be interviewed. The CO must then use other means to verify the credibility of the information provided in this manner.

i. *Location of Interviews*. COs normally conduct interviews during the on-site investigation. However, the CO may conduct interviews via telephone, as appropriate. For instance, the CO may need to interview a former employee. There may also be situations when a

contractor refuses to allow on-site interviews of nonmanagerial employees or where such employees want their interviews conducted away from the establishment. When possible, the CO will attempt to explore alternatives with the contractor or the employee, as appropriate. One possible alternative is conducting interviews during meal breaks. Other options might include interviewing an employee on-site prior to the start of work shifts, or at the end of his or her shift. A CO may also conduct interviews at an off-site location.

j. *Telephone Interviews*. COs conduct telephone interviews only when it is not feasible to conduct the interview in person since the CO cannot observe the interviewee's demeanor during a telephone interview, making credibility determinations more difficult. However, when telephone interviews of current employees, former employees or applicants are necessary, the CO must type the resulting notes and send a copy to the interviewee for review, revisions, as appropriate, and a signature. As with in person interviews, COs will ask whether there is anyone else present with the interviewee to address any concerns this may create, as described above.

k. *CO is Unable to Conduct Interview*. If the CO is unable to conduct an interview, he or she should add a memorandum to the file explaining who was supposed to be interviewed and why the interview did not occur. For example, the complainant may identify a potential witness to the alleged harassment, but the potential witness indicates to the CO that he or she was, in fact, not a witness to the alleged conduct and does not want to submit to an interview.

6I03 GATHERING RELEVANT DATA AND CONDUCTING INTERVIEWS

The nature of the specific allegations to be investigated will determine the information the CO should gather. Certain data will be common to most investigations, such as applicable personnel policies, collective bargaining agreement, data regarding the employment practice in question, and the personnel files of the complainant and comparators. The CO's Investigative Plan should identify what information the CO will need to address each allegation. However, the CO may identify additional information, documentation or records to obtain.

In addition to gathering specific data and documents, the CO will also need to develop a list of possible interview questions to gain an understanding of the allegations and issues, corroborate or verify what was said by other witnesses, what other witness may have said about the allegations, identify other possible witnesses, and generally gather additional information. In order to gain an understanding of the allegations and issues, the CO should prepare open-ended questions to ask interviewees (*e.g.,* ask interviewee to explain and describe their observations and experiences related to the issues). The CO should listen closely to the interviewee's answers and use them to formulate direct follow-up questions, as appropriate. The Investigative Plan should include a structure (*e.g.,* a list of interview questions or an interview outline) for the interviews the CO will conduct with contractor officials, the complainant and witnesses. The CO should develop interview questions that will elicit responses to explain the factual circumstances surrounding the allegations (*e.g.,* who was involved and who witnessed the actions, what actions were taken, where the events occurred, how decisions were reached and why specific actions were taken). The CO should develop interview questions to ensure that he or she identifies and obtains all relevant documentation. The CO should always be alert to opportunities to ask

necessary follow-up questions and pursue unexpected avenues of inquiry that may open up during the interview.

The CO should also confirm and verify information obtained in interviews. For example, the CO may interview two witnesses and each witness provides a similar description of an incident that occurred in the break room, while a supervisor provides a different description of the incident. One of the interviewee's statements indicated that some employees were clocking out at the time of the incident. Employees enter the break room to clock out. The CO should review sign-out forms for the day and time in question in order to identify other possible witnesses. The CO should then interview these possible witnesses and review any documentation that may provide confirmation.

Provided below, by type of allegation, are general guidelines for data gathering.

a. *Harassment.* The CO should gather copies of relevant policies and procedures, and make observations of environmental conditions (*e.g.,* if the location of an incident is identified, observe the location and determine whether there may have been possible witnesses to the incident). The CO should request copies of any internal grievance(s) or complaint(s) on file regarding the alleged harassment or other incidents of alleged harassment, and any documentation indicating how the contractor responded to any incidents. If it is alleged that the contractor took action against the complainant, the CO should also review the complainant's personnel records and other pertinent documents.

   The CO should develop questions to assist in understanding the specifics of the alleged incident(s), applicable policies and all relevant documentation, other similar incidents, possible witnesses to the alleged discriminatory action(s), contractor response to alleged harassment, etc.

   For example: The complainant alleged that a drawing, including a derogatory depiction and remark that made fun of a physically impaired person, was posted on a wall in the break room. The complainant observed the drawing during his lunch break. The CO should ask the complainant to identify possible witnesses to interview, but should also make a random selection of other employees to interview who may have had the opportunity to observe the drawing. The CO should develop questions for possible witnesses and contractor staff members to gather information confirming or disaffirming whether the drawing was posted; whether the poster contributed to a hostile environment; whether anything else happened to contribute to a hostile work environment; whether it was the only time such a derogatory depiction was posted on the work site and, if not, how often; what the remark said; and whether the contractor knew or should have known about the depiction. If the contractor did know, did it take immediate and appropriate action to remedy the identified harm, and to prevent future harassment and, if so, what were those actions?

   COs should note that in conducting interviews and recording the information obtained during an investigation of an allegation of harassment, COs should fully and accurately document any harassing or derogatory remarks, statements or actions. This documentation is necessary to ensure that the CO can make a determination whether the words or actions were severe or pervasive enough to constitute harassment. The CO must not rephrase the interviewee's

statements or make use of euphemisms. It is also important to note that witnesses may provide statements that are in direct conflict with each other. When the statements are given confidentially, it is important to make sufficient efforts to confirm and verify testimony whenever possible, while maintaining confidentiality.

b. *Retaliation and Interference*. In conducting a complaint investigation, the CO should inform contractor officials, employees and applicants, as well as other people who may be a part of the investigation, that the law prohibits the contractor from retaliating because of their involvement in the process.[342]

The CO should gather data and develop questions regarding the activity that the complainant alleges was the cause for the retaliation.[343] Because a retaliatory action can include any number of actions, including harassment, the CO will need to identify the policies and procedures at issue, and obtain these for review. The CO may also need data to conduct a comparative analysis if the complainant alleges that the retaliatory act was an adverse employment action (*e.g.,* terminated, demoted, not hired) or the contractor treated the complainant less favorably than other individuals.

The CO should develop questions to determine whether the complainant engaged in protected activity, whether the complainant was subjected to adverse action or treatment, or whether there is a connection between the protected activity and the adverse action or treatment (*e.g.,* close proximity in time or other evidence such as the complainant was treated less favorably than others in a similar situation). The CO should examine contractor assertions for credibility. If the contractor makes an assertion that there is a legitimate, nondiscriminatory reason for any adverse action, the CO should examine the action accordingly. For example, the CO finds evidence supporting that the complainant participated in a protected activity (*e.g.,* filed an EEO complaint) and the complainant was subjected to adverse action (*e.g.,* demotion) shortly after the complainant's supervisor received notice of the complaint. The contractor asserts that the complainant was demoted because of poor performance and not because of having filed the complaint.

For this example, the CO should review any pertinent policy regarding demotions, review the complainant's personnel record to determine whether the complainant's work performance was rated poorly and whether the complainant received any required notice that he or she would be subject to demotion. The CO should also examine other employees' personnel files to determine if similarly situated employees who did not engage in protected activity were treated in the same or similar manner. The CO should interview the supervisor who took the adverse action, interview other contractor officials regarding the policy governing demotions and applicable procedures, and interview witnesses, as appropriate.

c. *Specific Claims under Executive Order 11246*. Under Executive Order 11246, a complainant may have been terminated, harassed, demoted, denied employment or denied benefits provided by a contractor, among other potential discriminatory acts. The CO should gather data and tailor interview questions according to the particular facts of the allegations and the

---

[342] See FCCM 6B03, and 41 CFR 60-1.32, 60-300.69 and 60-741.69.

[343] See Appendix A-9 – Retaliation and Interference: Complaint Processing Outline and Checklist.

protected basis. For example, a claim of termination based on gender identity will involve a different set of questions than a complaint alleging termination for discussing a co-worker's compensation.

Below are a few examples of different types of discrimination that are intended to illustrate the types of allegations that a CO may investigate under Executive Order 11246. These examples are not exhaustive; they are only intended to illustrate some of the types of data requests and interview questions a CO would include in the Investigative Plan for allegations that are specific to Executive Order 11246. The CO should interview employees, former employees and management officials, as appropriate to the case, developing questions that address policies and procedures related to the alleged discriminatory action, as well as questions that address the specific factual scenario that gave rise to the alleged discriminatory act.

1. *Not Making Accommodation to Religious Observance.* If a complaint raises an allegation of denial of religious accommodation, the CO should ask the contractor whether and how it makes accommodation to the religious observances and practices of its employees, whether and how the complainant was accommodated, and obtain any relevant policies and records. If the contractor denied an accommodation, the CO should ask whether the complainant requested a religious accommodation and how the contractor responded. If the contractor denied a religious accommodation, the CO should ask why.[344] If the contractor reports that no one requested an accommodation, the CO should review procedures available for evaluating such requests. The CO should review employee files and be alert for any pattern of discipline or terminations based on refusal to work on certain days for religious observances. Allegations of national origin discrimination may sometimes be closely linked to discrimination on the basis of religion. The CO should examine the factual situation to determine whether it gives rise to both forms of discrimination.

2. *Claims on Basis of Sexual Orientation.* If, for example, a complaint alleges sexual orientation discrimination because the complainant was denied a noncompetitive promotion shortly after announcing her plan to marry her same-sex partner, the CO should ask the complainant and the contractor for information regarding the promotion opportunity and its denial. The CO also should ask the complainant details about her wedding announcement (*e.g.,* whether and when the supervisor or others in the workplace were informed, and whether and when the announcement was published in the local newspaper), and ask her supervisor whether and when he was aware of the complainant's sexual orientation. The CO should obtain information regarding any policies or procedures that apply to noncompetitive promotions; review the personnel record and performance evaluations of the complainant to confirm when her performance evaluation occurred; determine whether the evaluation was conducted in conformance with policy and procedures, and whether prior performance evaluations were similar or significantly

[344] A contractor must accommodate the religious practices and observances of employees or prospective employees, unless it is unable to reasonably accommodate the observance or practice without undue hardship on the conduct of the employer's business. "Undue hardship" in religious accommodation complaints is interpreted differently by courts than the undue hardship standard in disability cases under the ADA. See FCCM 2J01.

different and, if so, for what reason. The records and performance evaluations of similarly situated employees of other sexual orientations should be reviewed to determine whether noncompetitive promotions were awarded for any individuals and any noted reasons for differences in performance ratings. The CO should also conduct interviews of individuals who were present when the complainant announced her plan to marry and question whether anyone observed the supervisor's (or other management) reaction to the announcement or expression of an opinion regarding the announcement. The CO should also, through interviews, gather information about the workplace environment or corporate culture, including whether there have been other similar incidents or allegations of discrimination on the basis of sexual orientation.

3. *Claims on the Basis of Gender Identity.* If, for example, a complainant alleges that he was fired when he told his boss that he was planning to receive transition-related medical services to facilitate the adoption of a sex other than his designated at birth, the CO should obtain information through interviews and record reviews to determine whether the complainant was treated less favorably or was subjected to a policy that, on its face, discriminates on the basis of gender identity. The CO should first ask the contractor and review documentation as to the reason the contractor terminated the complainant. Then, the CO should review any pertinent policies and procedures applicable to termination actions to determine if the policies are nondiscriminatory on their face, and in their application. This process would include reviewing a sample of personnel files for terminated employees for comparative purposes. The CO should review the complainant's personnel record to determine whether the record does or does not support the termination or indicates a reason for termination, and whether such reason is in conformance with existing nondiscriminatory policy. The CO must also interview the complainant, supervisor, and any other individuals who have knowledge of the termination action, and, among other things, ask why the complainant was terminated and whether the complainant's gender transition played any role in the decision to terminate. The CO should conduct interviews of other employees and supervisors to determine the workplace environment or corporate culture promoted by the contractor, and review any anti-discrimination training provided by the contractor.

4. *Pay Transparency Claims.* If, for example, a complainant alleges that she was demoted after discussing with other female colleagues how much their male co-worker makes, the CO would obtain information through interviews and reviews of contractor records to determine the particular circumstances of the pay discussion and her demotion, as well as the particulars of the complainant's job functions. The CO must determine whether the contractor had knowledge that such a discussion took place and whether there appears to be a connection between demotion and the contractor's knowledge of the discussion (*e.g.,* a sudden negative change in how the complainant's work was perceived after the contractor learned of the discussion). It is important to understand the situation surrounding the discussion in the event the contractor raises a workplace rule defense, claiming that the complainant was demoted for violating a consistently and uniformly applied company policy. Also, in the event that the contractor raises the essential job functions defense, the CO must determine whether the complainant had access to the compensation information of other employees or applicants as part of her essential job functions and whether she was discussing the compensation of colleagues with other

employees who do not have access to compensation information as a part of their essential job functions. Determining whether one of these contractor defenses applies is an important part of the CO's investigation and will require review of the complainant's personnel records, including position description. Also, it is important for the CO to interview witnesses to the discussion of pay that prompted the complainant's demotion, as well as the complainant's supervisor and other company officials, to determine whether the contractor maintains a written or unwritten pay secrecy policy.

5. *Not Making an Accommodation for Pregnancy.* Complainants may allege that a contractor denied them light duty as an accommodation when they were unable to perform some of their job duties because of pregnancy. In these types of complaints, the CO should obtain documentation of the complainants' accommodation requests, their written job descriptions, the limitations of any nonpregnant employees currently or previously provided with light duty similar to that requested by the complainant, light duty requests from nonpregnant employees and the dispositions of all such requests, the contractor's leave and light-duty policies, and records showing how the contractor handled other light duty requests. This documentation must be analyzed to determine whether the contractor only denied light duty as an accommodation to employees affected by childbirth, pregnancy or related medical conditions. It should also be analyzed to assess whether the employer's policies impose a significant burden on pregnant workers, for example, whether the employer accommodates a large percentage of nonpregnant workers while failing to accommodate a large percentage of pregnant workers. The CO should also review the medical files of any employees for whom light duty was granted as an accommodation and the written job description of those employees. This documentation will help the CO determine whether the employees who received light duty as an accommodation were similar to the complainants in their ability or inability to perform their job duties. Other employees should be interviewed about the contractor's light duty practices. The CO should ask the contractor its reasons for denying the light duty as an accommodation for pregnancy.

d. Disability Complaints. Under Section 503, a complaint may contain allegations of individual discrimination (*e.g.,* termination, nonselection, harassment and termination) or systemic discrimination based on disability, or retaliation. Additionally, Section 503 allows any individual to file a complaint alleging violations of the Section 503 regulations (*e.g.,* violation of the confidentiality or medical examination provisions). The CO should gather data and develop interview questions for the Investigative Plan accordingly. Below are several examples of types of complaints that OFCCP may receive under Section 503. The examples include the types of data and interview questions that should be included in an Investigative Plan.

1. *Not Making Reasonable Accommodation*. If, for example, a complainant alleges that she was denied an accommodation needed to enable her to perform the essential functions of her job, the CO should ascertain how and to whom the request for accommodation was made, whether the contractor requested documentation of the existence of the disability (or the limitation needing accommodation) and, if so, the documentation provided by the complainant in response. If a request was made but no accommodation was provided, the CO should ask the contractor its reasons for denying the request and for any

documentation supporting its reasons. The CO should also inquire as to whether the contractor engaged the complainant in an interactive process to determine an appropriate accommodation. (Though not a requirement, whether the contractor engaged in an interactive process with the complainant to determine an appropriate accommodation is relevant to the question of damages in a dual filed complaint, should a failure to accommodate be found.) If the contractor asserts that an accommodation different from the one requested was provided, the CO should verify that accommodation was provided and determine whether the accommodation provided was effective, that is, did it enable the complainant to perform the essential functions of her job? In making this determination, the CO may need to gain a clear understanding of the job or position in question and the differences between the requested and provided accommodations. The CO should obtain a written job description, information regarding the processing of the complainant's and others' requests for reasonable accommodation, any written accommodation procedures or practices, and information to confirm whether the contractor provided the reasonable accommodation in a timely and appropriate manner.

When a contractor defends itself against an allegation that it did not make a reasonable accommodation by claiming that the specific reasonable accommodation caused undue hardship, the contractor must prove that providing that accommodation would have caused significant difficulty or expense. When investigating such a complaint, the CO should obtain information to determine whether a contractor's assertion that an accommodation would impose an undue hardship is valid, and whether it was valid at the time the contractor denied the accommodation. In examining the contractor's assertion, the CO should review the undue hardship factors listed in 41 CFR 60-300.2(aa) and 60-741.2(aa). If the evidence supports that providing a specific accommodation would have imposed an undue hardship, the CO should determine whether the contractor considered alternative accommodations, and whether an alternative accommodation existed that would have been effective, but would not have imposed an undue hardship. If such an alternative existed, the contractor would be obligated to provide it.[345]

The CO should develop interview questions regarding the functions of the job or position in question, the requested accommodation (and the provided accommodation, if any), whether the complainant can perform the essential functions of the job with accommodation and the contractor's response to the request for accommodation. The CO should interview the complainant as to his or her physical or mental impairment, the major life activity or activities substantially limited by the impairment, the need for an accommodation and the accommodation(s) requested. The CO should interview contractor officials as to whether the contractor provided the requested reasonable accommodation or an effective alternative accommodation. The CO should also question whether and how the contractor responded to other similar requests for accommodation.

2. *Requiring and Using Medical Examinations or Disability-Related Inquiries.* For all complaints related to a contractor's use of medical examinations or disability-related inquiries, the CO needs to determine at what stage of the employment process (*i.e.*, pre-

[345] Also, see FCCM Section 6E06.

offer, post-offer or during employment) the examination or inquiry was made and the contractor's stated justification for requiring the examination or making the inquiry. The CO should initially determine whether making the inquiry or requiring the medical examination was unlawful (*e.g.,* the complainant was an applicant and the exam was conducted pre-offer or the complainant was an employee and the exam was not job-related and consistent with business necessity). If the information obtained from the exam or inquiry was used in an adverse manner against the complainant (*e.g.,* a job offer was withdrawn or the complainant was terminated), the CO should also consider whether the adverse action discriminated against or screened out the complainant on the basis of disability. Depending on the nature of the complaint, the CO may also need to determine the contractor's process for administering the exam or making the inquiry, and if the exam or inquiry is administered to all similarly situated applicants or employees.

The CO should interview contractor officials to determine applicable policies and procedures, including how and when the contractor makes and records medical inquiries. The CO should also question how and when the provider conducts medical examinations and how the contractor uses the information obtained from the examination. The CO should interview the providers of any medical examinations required by the contractor to verify instructions the contractor gave to them and identify how they reported results. The CO must obtain a copy of the report, including any recommendations provided to the contractor. In addition, when a complainant alleges that, as an employee, he or she was unlawfully required to take a medical exam, the CO would ask questions related to whether the exam was job-related and consistent with business necessity. For example, if a contractor required a "fitness for duty" return-to-work exam for the complainant who was on leave because of cancer treatments, the CO would ask the contractor to explain the complainant's job duties. Additionally, the CO would ask the contractor how the exam relates to the performance of the complainant's job duties and why the exam is necessary for the operation of its business.

3. *Confidentiality Issues.* Anyone may file a complaint alleging that the contractor violated its obligations under the confidentiality provisions in Section 503 or VEVRAA, regardless of whether they have a disability or are a disabled veteran. In investigating these complaints, the CO should examine the contractor's policy and practices regarding records that are to be kept confidential. The CO may need to review records and inspect the location of the records to determine if there was a breach of confidentiality. Interviews may be necessary to determine whether the contractor breached confidentiality by inappropriately sharing medical information with other employees, or unlawfully commingles confidential medical records with the employee's personnel file or the contractor's data analysis file on self-identification.

4. *Qualification Standards, Tests and Other Selection Criteria.* The CO should determine whether the application of a qualification standard, test or other selection criterion excluded the complainant from an employment opportunity on the basis of his or her disability. If so, the CO should gather information to determine whether the challenged selection criterion is job-related and consistent with business necessity. The CO should obtain a written job description, an explanation from the contractor and any supporting documentation as to how the criterion relates to the job, and factual information about

how the job is actually performed. If the criterion relates to health or safety, the CO should gather information to determine whether the criterion is necessary to avoid the existence or creation of a direct threat, or is required by federal law. Should the CO determine that the criterion is job-related and consistent with business necessity, the CO should obtain information to assess whether the complainant could satisfy the selection criterion with the provision of a reasonable accommodation.

With this type of complaint, an individual or group of individuals would likely allege that they have been screened out by a qualification standard because of a disability. The CO would ask the contractor for specifics on whether the complainant was not selected because the qualification standard screened him or her out because of his or her disability; whether the qualification standard is job-related and consistent with business necessity; whether the qualification standard is consistently applied to all similarly situated employees, including incumbent employees; what the job functions for the position are; whether the selection criterion only concerns a marginal job function; and whether there would be an accommodation that would enable the complainant to meet the qualification standard.

5. *Relationship or Association with an Individual with a Disability.* The data gathered and questions asked will vary depending upon the specific nature of the allegation. For example, if the complaint alleges that the contractor denied the complainant equal access to the contractor's health insurance plan because he or she has a child with a disability, the CO should obtain copies of the contractor's policies and procedures related to health insurance, records related to the complainant's application for insurance and records related to the processing of that application. If the complaint alleges that the contractor did not hire or promote the complainant because of his or her association with a person with a disability, the CO would gather information and data related to the selection process, the other applicants for the job at issue (including the applicant selected) and the reasons for the nonselection of the complainant.

   The CO should interview the complainant to determine that he or she has a relationship or association with an individual with a disability and the reason(s) for his or her belief that the contractor discriminated against him or her because of that relationship or association. The CO should also determine whether the contractor was aware that the complainant had a relationship with an individual with a disability and obtain an explanation from the contractor regarding the reason for the employment action or decision that is the subject of the complaint, and information regarding any relevant policies or practices. If the contractor denies knowledge of the complainant's relationship with an individual with a disability, the CO should examine the credibility of the statements made and seek possible witnesses who could confirm or disaffirm whether the contractor knew of the complainant's relationship.

e. *Complaints from Protected Veterans (Non-Disability)*. Under VEVRAA, a complaint may contain allegations of individual discrimination (*e.g.,* termination, nonselection, harassment and termination) or systemic discrimination based on protected veteran status, or retaliation. The regulations specify the specific protected categories of veterans: disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and Armed

Forces service medal veterans. In reviewing a complaint filed under VEVRAA and in discussing it with the complainant, the CO should clearly distinguish whether the complainant believes the alleged discrimination was based on his or her status as a disabled veteran, or based on one of the other specific categories of protected veterans. If the allegation is based on the complainant's status as a disabled veteran, the CO should follow the procedures for gathering data and developing interview questions for a disability complaint.[346]

Additionally, VEVRAA allows any individual, whether or not they are a protected veteran, to file a complaint alleging violations of the VEVRAA regulations (*e.g.,* failure to list jobs with the appropriate ESDS). The CO should gather data and develop interview questions for the Investigative Plan accordingly.

1. *Protected Veteran Status*. If a complaint alleges discrimination based on protected veteran status, the CO should obtain from the complainant documentation proving his or her status as a protected veteran (*e.g.,* DD-214). If the complaint raises class issues, the CO should obtain documentation to prove that affected class members are protected veterans. As with other types of discrimination, the CO would gather data and tailor interview questions according to the particular facts of the allegations, with a specific focus on employment practices or acts that the might indicate that the complainant or complainants' veteran status was taken into consideration in a manner that resulted in discrimination.

   For example, if the complainant alleges that he or she was terminated because of his or her status as a protected veteran, the CO should gather data through a review of records, and conduct interviews with company officials, the complainant and select employees. The CO should analyze information, from the time period in question, to include: termination data indicating whether any employees have self-identified or were otherwise known to be protected veterans; personnel records for terminated employees who were also protected veterans, including the complainant; a comparative sample of personnel records of similarly situated nonprotected veteran employees who were terminated, and records for similarly situated employees who were retained; written policies regarding terminations; and descriptions of programs designed to retain protected veterans. The CO would also interview the officials involved in the termination to find out, among other things, if they knew the complainant was a protected veteran, the policies governing their decision to terminate, the reason for termination, the particular information the officials relied on to make the decision, and the names and circumstances of any other employees who had been terminated during the time period in question.

2. *Job Listing Requirement*. If a complaint alleges a violation of the job listing requirement, the CO should request job listings from the contractor and contact the ESDS that the contractor used. The CO should request confirmation that the contractor listed its employment openings with the ESDS in a manner or format permitted by the ESDS. The CO should obtain from the ESDS a listing of the job orders that the contractor placed by job title and date. The CO should then compare this list with a list of vacancies the

[346] See FCCM 6I03(i) – Gathering Relevant Data and Conducting Interviews.

contractor has filled through new hires, identify any such jobs not listed with the employment office, and determine whether the jobs should have been listed. The CO should also determine whether the contractor informed the ESDS that it is a federal contractor and provided the ESDS with contact information for each of the contractor's hiring locations in the state. The job listing requirement is unique to VEVRAA and ESDSs have special responsibilities regarding protected veterans.[347] The local ESDS offices usually have a representative who deals primarily with veterans' matters. The CO should contact the LVER in the office nearest the contractor's establishment for any pertinent information regarding the contractor or the complainant.

f. *Other Equal Opportunity Clause and Recordkeeping Requirements*. As explained above, the CO should conduct appropriate inspections and examine records to determine whether other equal opportunity clause or recordkeeping violations exist.[348] The CO should conduct interviews of contractor officials responsible for meeting its regulatory obligations, such as posting workplace posters, and for creating and maintaining records. Interview questions should seek to determine who is responsible for meeting these obligations, whether there are policies applicable to the obligation and whether there were deviations from the policy. If the contractor did not comply with an obligation, the CO should question responsible parties to determine why the contractor did not meet the obligation.

Provided below is general guidance for creating questions based on the applicate legal framework for providing types of discrimination:

a. *Systemic Disparate Treatment*. The CO will gather data and develop interview questions regarding the specific employment action (*e.g.,* use of a selection procedure), or the loss of benefit or opportunity at issue, in order to conduct analyses to determine whether systemic disparate treatment occurred, that is, whether similarly situated individuals outside the complainant's protected group received more favorable treatment. The type of data needed will depend on the specific allegation. If a complainant indicates that there is an EEO grievance or complaint on file, the CO should request these records. Additionally, the CO should request copies of any grievances others have filed that raise similar issues. The CO will need other data and information, including copies of any applicable policies and procedures.

Data related to employment actions may include, but is not limited to, applicant flow, hiring, termination, promotion, and compensation. In examining selection procedures, the CO may also need to analyze data that reflects the application of specific selection criteria (*e.g.,* a structured interview). In addition to hiring or promotion data (who was hired or promoted and who was not), the CO should also include data such as whether the selection procedure is pass/fail or a score is used (cut-off score or weighted), and the results of the selection procedure (*i.e.*, who advanced from the interview and who did not).

The CO should ask interview questions designed to determine established policies and procedures, and any deviations that may have occurred in the application of the policies and procedures. In addition, the interview questions should seek to identify people who were

---

[347] 41 CFR 60-300.84.
[348] See FCCM 2I: Technical Requirements.

similarly situated to the complainant but may have been treated differently. Interview questions should also cover the criteria used at each selection stage and the people who applied them at each stage.

b. *Systemic Disparate Impact*. The CO should develop interview questions and examine employment data (*e.g.,* applicant flow, hiring, termination, promotion, compensation data), as appropriate, to the allegations. Additionally, the CO should obtain and review any policies applicable to the action in question (*e.g.,* written policies regarding eligibility for promotion or increases in compensation). The CO will examine data regarding the specific employment action or use of selection procedure to determine by statistical analysis whether the policy or procedure has the alleged adverse impact. The CO may also need to analyze data that reflects the application of a specific selection procedure. For example, if the complaint alleges that a pencil and paper test used as a selection criterion has a disparate impact, the data needed will include not only hiring or promotion data such as who was hired or promoted and who was not, but also data and information relevant to whether the contractor validated the selection procedure and how, and a description of how the selection procedure was applied to applicants and employees, as appropriate. A copy of the validation study should also be included.

If the complaint alleges that a specific policy or practice has an adverse impact, the CO should develop questions for appropriate contractor officials to gain an understanding of the development and application of the policy or practice in question (*e.g.,* a compensation policy with an adverse impact on women in a particular job group). The questions should help the CO evaluate whether the policy or practice is job related and consistent with business necessity.

c. *Individual Disparate Treatment*. Many of the Section 503, VEVRAA and Executive Order 11246 complaints that OFCCP investigates will allege that the contractor treated the individual filing the complaint less favorably because of a protected basis. These individual disparate treatment claims may allege less favorable treatment in employment actions, such as hiring, harassment, terminations, promotions, compensation or application of selection criteria, among others.

6I04 REVIEW OF RECORDS

The CO should review all of the records submitted by or obtained from the complainant and contractor relevant to the allegations in the complaint. FCCM 6I03 addresses the types of records that the CO should obtain during the on-site investigation and FCCM 6H discusses the types of documentary evidence a CO should attempt to obtain prior to the on-site investigation. The nature of the allegations and the applicable legal theories will determine the types of analyses the CO should conduct using the data obtained during the on-site visit.

6J CONDUCTING ANALYSES AND THE INVESTIGATIVE REPORT

The CO must write an Investigative Report in all instances in which the CO has conducted an investigation. See Appendix A-10 – Investigative Report for the format of this report. In writing this report, the CO should not express personal opinions and should not include matters unrelated to the issues of the complaint or to issues that arose during the course of the investigation. Upon

completing the investigation, the CO will analyze all data and information that explains, describes or clarifies the incident, or the application of the policy, procedure or practice at issue. The CO will analyze all comparative and statistical data using the appropriate analytical framework for addressing the allegations. The results of the analyses and a description of any direct, circumstantial and anecdotal evidence, either refuting or supporting the allegations, will be included in the Investigative Report. The CO will make factual findings and cite the support for the findings with regard to each allegation. The CO will also make a determination of whether there is sufficient evidence to support that discrimination occurred. The Investigative Report should also include a discussion of the contractor's defenses and the CO's assessment of the merits of those defenses.

6K USE OF A NOTIFICATION OF RESULTS OF INVESTIGATION

The CO prepares a NORI to report the results of OFCCP's investigation of the complaint allegations. If the investigation does not result in a finding of discrimination, OFCCP issues a no violation NORI, as explained below in FCCM 6L02. If the investigation results in a finding of discrimination, the CO issues a violation NORI explained below in FCCM 6L05.

6K00 SIGNATURES AND PROCEDURES

The CO should prepare the NORI for the signature of the Regional Director, or designee. After being signed, the original NORI will remain in the case file. The CO will send copies of the NORI to the complainant and the contractor with a letter of transmittal, sent certified mail, return receipt requested. The CO will provide copies of the NORI to the regional office. The CO should annotate the Case Chronology Log to reflect the transmission and, as appropriate, the receipt of the document.

6K01 NOTICE TO LABOR UNION OF A VIOLATION FINDING

When the remedy for a finding of a violation would require a change in or otherwise affect a collective bargaining agreement between the contractor and a union, or require the award of retroactive seniority where seniority is governed by a collective bargaining agreement, the union will be notified of the particular violation and will be invited to participate in its conciliation.[349]

6L RESOLUTION OF THE COMPLAINT

This is the final stage of the complaint process. Complaint resolution includes issuing the NORI, formulating remedies, and complaint conciliation efforts. This stage should be completed in no more than 60 days.

[349] See FCCM Chapter 8 – Resolution of Noncompliance.

6L00 SETTLEMENT BEFORE COMPLETION OF INVESTIGATION

a. *Initiating Settlement*. The CO should be prepared to discuss settlement at any stage of the investigation, with the intent for the settlement to provide a just resolution of the violations. Before engaging in settlement discussions, the CO should advise the contractor that there is no prejudice to the position of the contractor for participating in settlement sessions prior to completion of the investigation, or for not participating in the discussions; and the contractor should not construe the government's participation in settlement sessions as a waiver of the government's right to proceed to a formal NORI if the settlement discussions are unsuccessful. The CO should provide his or her supervisor with all relevant information to assist in determining whether it is appropriate to enter settlement discussions.

b. *Complainant Notification of Resolution.* If, at any time prior to the completion of an investigation, the CO receives notification that the contractor and complainant have resolved the complaint to the complainant's satisfaction, and the CO has not received any data or information indicating unresolved compliance concerns, the OFCCP may close the case. The CO should confirm that the contractor and complainant have resolved all of the complaint allegations, and that no one has forced or coerced the complainant into stating that the complaint is resolved.[350]

6L01 PRIOR TO ISSUING A NO VIOLATION NORI

a. *Contact with the Complainant*. If the complaint investigation results in a proposed finding of "no violation," the CO must contact the complainant prior to the issuance of a NORI. The CO will inform the complainant of the no violation finding, the factual findings, the types of records reviewed, and whether all of the witnesses the complainant and OFCCP identified were interviewed. The discussion regarding witnesses and witness statements should be in general terms without identifying specific witnesses or their statements. This contact will give the complainant an opportunity, prior to the completion of the investigation, to introduce new or previously unconsidered evidence. If new evidence is introduced, the contractor must be given the opportunity to respond. Such contact with the complainant or contractor may be in person or by telephone, but the CO must document when and how he or she made the contact. The documentation must also identify the issues discussed, the complainant's response and any additional investigation the CO conducted as a result of this contact. If needed, the compliance officer may give the complainant 10 business days to provide additional material before issuing the NORI.

b. *Request for Release of Documents*. The CO must not release to any party any documents provided by any other party, the internal Investigative Report or interview transcripts. Based on Exemption 7(A) of the FOIA (5 U.S.C. 552(b)(7)(a)), OFCCP does not release records from an open investigation other than those provided by the requesting party itself.

---

[350] See Letter L-19 – Letter to the Contractor Confirming Complaint Resolution and Letter L-20 – Letter to the Complainant Confirming Complaint Resolution.

6L02 CLOSURE OF COMPLAINT WITH NO VIOLATION NORI

a. *Complaint Not Dual Filed under ADA and/or Title VII.* If a complaint involves only Executive Order 11246, Section 503 and/or VEVRAA allegations that are not dual filed under the ADA and/or Title VII, and there is a no violation finding, the CO will issue the NORI to the complainant and contractor upon completion of the investigation.[351]

b. *Complaints Dual Filed Under Section 503/ADA and Executive Order 11246/Title VII.* If a complaint is dual filed under Section 503 and the ADA or under Executive Order 11246 and Title VII, and there is a no violation finding, the CO will issue a no violation NORI to the complainant and contractor upon completion of the investigation, along with a Notice of Right-to-Sue.[352] Each NORI for dual filed complaints will also include the document entitled, Information Related to Filing Suit under Title VII and the ADA.[353]

6L03 CLOSURE OF COMPLAINT AND ISSUANCE OF "NOTICE OF RIGHT-TO-SUE" UPON REQUEST

If a complainant requests a Notice of Right-to-Sue in writing before 180 calendar days have passed since the filing of the complaint, and the Regional Director, or designee, can foresee that the investigation will extend beyond the 180th day, the Regional Director, or designee, will issue the Notice within 10 calendar days to the complainant. The Regional Director, or designee, should send copies to the complainant's attorney (if any), the contractor and the appropriate EEOC field office. If a complaint investigation remains open after 180 calendar days from the complaint filing date, and the complainant requests a Notice of Right-to-Sue in writing, the Regional Director will issue the Notice within 10 calendar days to the complainant. The Regional Director, or designee, should send copies to the complainant's attorney (if any), the contractor and the appropriate EEOC field office.[354]

Consistent with the Title VII and ADA procedures set forth at 29 CFR 1601.28, issuance of a Notice of Right-to-Sue upon request immediately terminates further OFCCP processing of the Title VII/ADA component of the complaint, unless it is determined at that time or at a later time that it would effectuate the purposes of Title VII/ADA to further process the Title VII/ADA component of the complaint. Upon issuance of the Notice, the Regional Director, or designee, can continue the complaint investigation or close the complaint without issuing a finding, noting his or her decision on the Notice of Right-to-Sue in the appropriate check box.

---

[351] See Letter L-21 – Notification of Results of Investigation: No Violation (EO 11246, Section 503, or VEVRAA Complaint (Not Dual Filed – no Notice of Right-to-Sue)).

[352] See Letter L-22 – Notification of Results of Investigation: No Violation (Dual Filed). The CO must include the L-22 Enclosure, Notice of Right-to-Sue under Title I of the ADA or Title VII of the Civil Rights Act of 1964: No Violation, with the no violation NORI.

[353] See Appendix A-11 – Information Related to Filing Suit under Title VII and Title I of the ADA.

[354] See Letter L-23 – Notice of Right-to-Sue under Title I of the ADA or Title VII (Issued on Request). Appendix A-11 – Information Related to Filing Suit under Title VII and Title I of the ADA must also be included with L-23.

6L04 NOTICE ISSUED UPON ADMINISTRATIVE CLOSURE

Any time that OFCCP administratively closes a dual filed complaint, a Notice of Right-to-Sue must be issued.[355] Administrative closures may occur at the conclusion of complaint perfection or during the complaint investigation. With dual filed complaints that are administratively closed, the Regional Director, or designee, will issue the Notice of Right-to-Sue to the complainant and send copies of the Notice to the contractor and the appropriate EEOC field office.

OFCCP administratively closes complaint investigations for several reasons, including:

- Even if proven to be true, the allegations raised in the complaint would not be a violation of the laws enforced by OFCCP;
- Complainant did not file within the applicable timeframes and good cause was not shown for an extension of the filing period;
- Complainant failed to provide requested necessary information, failed to appear or refused to be available for necessary interviews or conferences, or otherwise refused to cooperate to the extent that OFCCP is unable to complete its investigation of the complaint; or
- The CO cannot locate or complainant failed to respond to a notification sent to last known address within reasonable timeframe.

6L05 CLOSURE OF COMPLAINT WITH VIOLATION NORI AND CONCILIATION

If the CO's investigation results in a finding of discrimination, a violation NORI must be issued.[356] In dual filed cases under Section 503/ADA or Executive Order 11246/Title VII, if OFCCP issues a violation NORI, it will not issue a Notice of Right-to-Sue. A violation NORI invites the contractor to resolve the violations found through conciliation by informal means. The CO should telephone the contractor within five business days of its receipt of the NORI to arrange the conciliation meeting.

a. *Conciliation Meeting*. The conciliation meeting is the method by which OFCCP attempts to obtain voluntary compliance. The complainant is not a party to the conciliation. However, the CO should keep the complainant informed of the progress of any discussions and meetings, in order to gather further input and to discuss proposed settlements.

---

[355] See Letter L-24 – Notice of Right-to-Sue under Title I of the ADA or Title VII (Administrative Closure). Appendix A-11 – Information Related to Filing Suit under Title VII and Title I of the ADA must also be included with L-24.

[356] See Letter L-25 – Notification of Results of Investigation: Violation.

b. *Reasonable Conciliation Agreement*. If the field office believes it has arrived at a reasonable CA, which the complainant accepts, the contractor will acknowledge its responsibility by signing a CA.[357]

If the complainant will not accept what the field office considers to be a reasonable conciliation, the field office may cease its efforts on behalf of the complainant, but must nevertheless obtain from the contractor correction of any policies or practices which caused the discrimination. The steps in accomplishing this are as follows:

1. Request that the contractor submit, in writing, a full statement of its terms for conciliation to be maintained in the case file;

2. Notify the complainant, in writing, of the full details of the CA and request a written reply accepting or rejecting the conciliation terms;

3. If the complainant rejects the terms of conciliation and the field office considers the terms to be reasonable, the office will provide the complainant an opportunity to reconsider the conciliation terms; and

4. If the field office considers the offered conciliation terms to be reasonable and the complainant persists in refusing to accept them, the office will cease its efforts on behalf of the complainant and close the case file, providing the complainant with a Notice of Right-to-Sue.[358] The office will obtain from the contractor a CA resolving all discriminatory policies and practices.[359]

c. *Seeking Compensatory and Punitive Damages as EEOC's Agent*. In accordance with 41 CFR Part 60-742 and the MOU with the EEOC, OFCCP will act as EEOC's agent for obtaining relief for all aggrieved people covered by a dual filed Section 503/ADA complaint or an Executive Order 11246/Title VII complaint, respectively. The field office will attempt conciliation to obtain relief for victims who have suffered pecuniary losses and intangible injuries. The Regional Director shall be involved in the conciliation process for cases involving potential compensatory and punitive damages. When potential punitive damages are involved, the Regional Director must consult with the RSOL and the Director of Program Operations. OFCCP may seek compensatory and punitive damages as EEOC's agent during conciliation, but OFCCP may not seek such damages when it files a complaint.

---

[357] See FCCM Chapter 8 – Resolution of Noncompliance.

[358] See Letter L-24 – Notice of Right-to-Sue (Administrative Closure). Appendix A-11 – Information Related to Filing Suit under Title VII and Title I of the ADA must also be included with the Notice of Right-to-Sue.

[359] See FCCM Chapter 8 – Resolution of Noncompliance.

6M ENFORCEMENT

If any matter raised in the violation NORI cannot be resolved through conciliation with the contractor, the CO must make a recommendation to the RD concerning referring the matter for enforcement.[360]

[360] See Chapter 8 – Resolution of Noncompliance.

CHAPTER 7
EMPLOYMENT DISCRIMINATION REMEDIES

7A INTRODUCTION

This chapter contains methods for designing remedies for employment discrimination. It does not address the investigative steps of a compliance evaluation or complaint investigation. The process for investigating potential discrimination is set out in the preceding chapters of this Manual.

7A00 APPLICABILITY

This chapter is applicable to designing employment discrimination remedies under Executive Order 11246, as amended; Section 503, as amended; and the VEVRAA, as amended.

7A01 LIABILITY PHASE

During the investigative phase of the compliance evaluation and complaint investigation, the CO completes the appropriate report, such as the SCER Parts B and C, for a supply and service compliance evaluation. Once the CO completes the investigation and has analyzed all the information gathered, the CO determines, in consultation with his or her supervisor, whether there are findings of discrimination. This phase is sometimes referred to as the liability phase. The CO records liability findings in the appropriate SCER for compliance evaluations or, for complaint investigations, the Investigative Report. The findings are then communicated to the contractor as described in FCCM Chapter 8.

7A02 PROCESS FOR REMEDY

When the CO concludes that there was employment discrimination in violation of one or more of the laws OFCCP enforces, the CO, in consultation with his or her supervisor, will offer to conciliate a settlement with the contractor. Prior to this offer, the CO will design a remedy to present during the conciliation meeting and obtain approval from the Regional Director before presenting it to the contractor.[361] If the contractor and CO, in coordination with his or her supervisor, cannot reach agreement, OFCCP may recommend enforcement.

7A03 APPLICABLE LAW

COs must design employment discrimination remedies for Executive Order 11246 violations in a manner consistent with Title VII principles and Executive Order 11246, and the implementing regulations for Executive Order 11246. Remedies for discrimination against individuals with disabilities, including veterans with disabilities, will be consistent with ADA principles and

[361] As appropriate, the Regional Director may need to review the proposed remedy with the RSOL, national office or others.

Section 503, and their implementing regulations. Remedies of discrimination against protected veterans will be consistent with VEVRAA and its implementing regulations.

7B TIMELINESS AND CONTINUING VIOLATION

As a general rule, one seeking to remedy a discriminatory act must assert his or her rights within the periods established by the laws establishing the rights. Under OFCCP procedures, for an act of discrimination discovered during a compliance evaluation to be remedied as a violation of Executive Order 11246, Section 503 or VEVRAA, it must have taken place within two years prior to the date of the Scheduling Letter (Figure F-3 Scheduling Letter), unless the violation is part of a continuing violation. Complaints filed under Executive Order 11246 are timely if the complainant filed it within 180 calendar days of the alleged discriminatory act, except for good cause shown, in which case the Director of OFCCP may waive the filing deadline.[362] Complaints filed under VEVRAA and Section 503 are timely if the complainant filed it within 300 calendar days of the alleged discriminatory act, except for good cause shown, in which case the Director may waive the filing deadline.[363]

7B00 CONTINUING VIOLATION

The courts developed the continuing violation concept to address the fact that some employment practices are not discrete incidents, beginning and ending at particular points in time. For example, a policy or practice of paying lower wages to women rather than to men for the same or similar work is discriminatory and the contractor repeats the violation each time the contractor pays the women. When evaluating such violations, the courts will consider the entire time period during which the violations occurred or the time period since the effective date of the law, whichever is later. For example, a continuing violation which is grounded in racial discrimination is actionable from the date the continuing practice began or the effective date of Executive Order 11246 (September 1965), whichever is later. This is provided, of course, that the other requirements of coverage are met.

In compensation cases, contractors will be in violation of Executive Order 11246 any time they pay wages, benefits or other compensation that result, in whole or in part, from application of any discriminatory decision or practice.

a. Application of Continuing Violation Theory. OFCCP applies the continuing violation theory in compliance evaluations and complaint investigations. The theory is applicable to the following situations:

1. *Series of Individual Discriminatory Acts.* A continuing violation may occur when the discrimination involves a series of closely related acts. The acts must be sufficiently related to form a pattern of discrimination. The last of these acts must have occurred within the two-year period preceding the date of the Supply and Service Scheduling

[362] 41 CFR 60-1.21.
[363] 41 CFR 60-300.61, 41 CFR 60-741.61.

Letter or the Construction Compliance Evaluation Notice; or, in the instance of a complaint investigation, within the complaint filing period (*i.e.*, 180 or 300 days).

2. *Maintenance of a Discriminatory Policy or System*. A continuing violation may occur when a contractor maintains a discriminatory policy or practice into the two-year, 180-day period or 300-day period. The violation may focus on one particular employment practice, such as promotions or compensation; or it may deal with discrimination in a series of areas, including initial placement, promotions, transfers and salary. It is not necessary under this approach for OFCCP to show that a discrete act applying the alleged discriminatory policy occurred during the two-year period, 180-day period or 300-day period. It is sufficient to show that the policy or system continued into the period and that, if there had been a personnel action, the policy or system would have been applied in the alleged discriminatory manner.

b. Remedies Under a Continuing Violation. Once the CO establishes that there is a continuing violation by showing a series of related acts, one of which occurred within the liability period, or a continuing employment policy that extended into the liability period, then the contractor must remedy all acts that are part of the continuing violation since the effective date of the law under which relief is sought or from the start of the violation, whichever is later. This is so whether they occurred within or outside of the 180-day or 300-day filing period (complaint investigation), or two-year (compliance evaluation) period.

7C TYPES OF REMEDIES

Remedy represents a separate and distinct phase of the investigation. While the CO should be thinking about remedy throughout the investigation and obtaining the information (*e.g.,* wage rates, hours worked, earnings additions, start and termination dates of hires) necessary to determine the appropriate remedy, the CO should reserve conclusions about the final determination of remedy until he or she has sufficient information to make a finding that there has been discrimination. The final determination of remedy normally does not occur until after the CO presents the contractor with the preliminary findings, the contractor submits its response and the CO determines that the contractor's response does not adequately explain the alleged discrimination. The issues of the remedy phase of an investigation are very different from the issues of the violation phase. After establishing discrimination, the CO should begin identifying specific remedies. The remedy must address how to:

- Make the discrimination victims whole;
- Stop the violation; and
- Prevent the violation from recurring.

The remedy for a discrimination finding is in the CA. See Chapter 8 of this Manual for a discussion of the specific elements of a CA.

7C00 DESIGNING THE REMEDY

There is flexibility in designing remedies; the CO frequently develops remedies through negotiation and compromise. General guidelines for designing remedies are specified in Directive 2013-04, "Calculating Back Pay as a Part of Make-Whole Relief for Victims of Employment Discrimination." The CO should always seek a complete remedy. A complete remedy will correct the causes of the discrimination and make the victims of discrimination whole.

7C01 CORRECTIVE REMEDIES

Part of a complete remedy is the corrective remedy. Corrective remedies stop the violation and protect against its recurrence.[364] For example, to correct hiring discrimination caused by treating applicants differently during a subjective interview, corrective remedies could include stopping the use of the discriminatory interviews, substituting legitimate objective criteria (*i.e.*, objective criteria with no unjustified adverse impact) and establishing a monitoring system to ensure that the contractor applies the criteria in a nondiscriminatory fashion.

If an unvalidated or invalid test has an adverse impact, then corrective action would include eliminating the use of the test, continued use of the test in a manner that eliminates its adverse impact (*e.g.,* changing the cut-off score) or validating the test in compliance with the UGESP, thereby demonstrating its job-relatedness.

7C02 MAKE-WHOLE RELIEF

a. *General Principles*. Make-whole relief means simply that the contractor restores the victim of discrimination to the position, both economically and in terms of status, that he or she would have occupied had the discrimination not occurred. This relief usually involves placing the person in his or her rightful place, meaning placing the person in the job the person would have occupied with the seniority he or she would have had if not for the discrimination. For example, if the contractor discriminated against women in hiring for an entry-level maintenance position, make-whole relief would include placing a certain number of class members into entry-level maintenance positions as they become available. If the discrimination resulted in termination from employment, the affected class members should be reinstated to their prior positions. In addition to rightful placement, make-whole relief includes all economic benefits the victim would have received had the discrimination not occurred. These benefits would normally include things such as back pay with interest, retirement contributions, vacation credits, sick leave credits, payment for medical expenses that would have been paid by the employer's medical plan, missed training and any other employment benefits denied to the victim as a result of the discrimination.

[364] See also FCCM 7C12 – Nonmonetary Relief.

b. Case Law Precedent. In construing what constitutes make-whole relief, OFCCP follows Title VII principles.[365]

7C03 FRONT PAY

Front pay is appropriate whenever the contractor cannot place the victim immediately into his or her rightful place, or the position the victim would have been in if not for the discrimination. Front pay is the difference between the victim's current pay and the pay associated with his or her rightful place. There are a number of circumstances that can prevent immediate achievement of rightful place, including the absence of a vacancy, training required before beginning in the position, etc. When front pay is appropriate, the victim must start receiving the earnings associated with his or her rightful place from the date the CA is signed until a certain time in the future that is set by the CA or final order (usually when the contractor places him or her in the position at issue, or his or her position pay is equal to the rate it should be in his or her rightful place).

7C04 RETROACTIVE SENIORITY

a. Seniority as an Element of Make-Whole Relief. Seniority is often a critical component of relief. Without seniority, an individual who the contractor hires or promotes as a remedy for past discrimination may not have the level of protection against layoff or demotion to which he or she is entitled. If the contractor had hired or promoted him or her at the time the discriminatory act occurred, he or she would have had additional years of seniority and would be less vulnerable to layoff as a result. Therefore, requiring hiring or promotion as a remedy without also requiring an adjustment of seniority does not really make the victim whole. Similarly, in many situations, employers award promotions in whole or in part based upon the bidder's seniority. Merely placing a victim in the workforce without the seniority to which he or she is entitled will delay his or her attainment of his or her rightful place. Victims should receive all relevant seniority they have lost as a result of the discrimination, such as job seniority where relevant, in addition to company seniority.

b. Competitive and Noncompetitive Seniority. There are two types of seniority: competitive and noncompetitive. Competitive seniority may include seniority for the purposes of shift preference, vacation schedules, promotions, job bidding, layoffs, raises or training. When retroactive competitive seniority is fashioned as a form of relief, the employees who were not victims could effectively lose out in bidding for jobs or be in greater danger of layoff, etc., than those who received retroactive seniority. On the other hand, there are some types of noncompetitive seniority matters (*e.g.,* accrued leave, retirement computation) that, when remedied for individual victims, do not create the same concerns as remedying for competitive seniority issues. COs should consider the benefits and drawbacks of both types of seniority in their particular case when fashioning a remedy.

c. Nonunion Seniority. Some nonunion contractors operate under a system in which seniority is used in both the competitive and noncompetitive context. In other words, even without a

[365] Generally, OFCCP follows Title VII principles except in those finding unique to Section 503, such as those involving reasonable accommodation or qualification standards. In those instances, then OFCCP follows ADA principles.

union contract, promotions and layoffs, etc., are decided on the basis of seniority. In these situations, the victim is clearly entitled to obtain retroactive competitive seniority.

d. Union Involvement. When part of the remedy includes retroactive seniority, and a union agreement governs seniority, it is important to involve the union in the conciliation discussions on seniority. Although OFCCP generally does not have jurisdiction over unions, if the union consents to retroactive seniority in the CA, the agreement will be enforceable. If the union is not involved in the conciliation efforts or does not consent, the seniority relief may not be enforceable. If the union refuses to participate in the conciliation process or agree to seniority relief, the CO and his or her supervisor, in coordination with their regional office, should consult their RSOL.

e. Procedures When Union is Involved.

1. *Union Participates and Consents.* OFCCP will invite the union to participate in conciliation of a violation that requires a retroactive seniority remedy. The CO will make every effort to involve the union in the conciliation process and get its consent to the award of retroactive seniority. If the union participates and agrees to the seniority remedy, then OFCCP can enforce the remedy. If the CO invites the union to participate in the conciliation of seniority issues, its role is limited to those issues. The union should not be involved in other remedy areas (*e.g.,* in determining back pay, changing the selection process).

2. *Union Refuses to Participate or Consent.* If the union declines to participate in conciliation or otherwise does not consent to an award of retroactive seniority, OFCCP may not be able to enforce any retroactive seniority relief. OFCCP should seek to lay the groundwork to defend its insistence upon seniority relief. In other words, OFCCP should not agree to the usual boilerplate language that says that the contractor does not admit to violating one or more of the provisions in Executive Order 11246, Section 503 or VEVRAA. Instead, the CA should recite the factual bases for OFCCP's findings of violation. Under these circumstances: (a) the nonadmissions clause is not included in the CA, and (b) paragraph 1 of the General Provisions of the CA will note that the union was invited to participate, but declined to do so or to otherwise consent to an award of retroactive seniority, as applicable.

3. *Contractor Refuses to Sign.* If a contractor refuses to sign a CA for any reason, including the fact that the CA does not contain the nonadmission language, OFCCP should inform the contractor that this failure to conciliate could result in referral for enforcement.[366]

f. Other Methods for Addressing Retroactive Seniority

1. *Bifurcation.* One method to avoid union objection is to bifurcate the competitive and noncompetitive seniority issues. Since the union most likely will not object to the award of noncompetitive seniority, this may be a viable option for resolution.

---

[366] See Chapter 8 – Resolution of Noncompliance.

2. *Cash Buyouts.* To address competitive seniority issues, some contractors propose a cash buyout of employee seniority rights. In other words, the contractor offers a lump sum payment to identified victims of discrimination (*i.e.*, those who are not hired) in exchange for a waiver of their entitlement to competitive seniority. Seniority buyouts are technically possible, but the CO must carefully craft and review such proposals' fairness. The CO, in coordination with his or her supervisor and RSOL, must forward offers of seniority buy-outs to the national office, DPO, for review and approval.

7C05 OTHER REMEDIES AFFECTING A UNION AGREEMENT

The CO should use the procedures described in FCCM 7C04 immediately above for other remedies (besides retroactive seniority) that require a change in or otherwise affect a union agreement.

7C06 BACK PAY

OFCCP seeks back pay as a part of a make-whole remedy resolving discrimination violations under Executive Order 11246, Section 503 and VEVRAA. Back pay serves to remedy lost earnings that the victims would have received absent discrimination. OFCCP's Directive 2013-04, "Calculating Back Pay as a Part of Make-Whole Relief for Victims of Employment Discrimination," provides additional guidance on calculating back-pay.

a. *Back Pay Required*. Back pay is normally part of any make-whole remedy. The U.S. Supreme Court stated in *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 421 (1975) that, under Title VII, "given a finding of unlawful discrimination, back pay should be denied only for reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination." Given this stringent standard, it would be rare for the victim not to receive back pay.

b. *Elements of Back Pay*. Back pay should reflect total compensation lost by the victim due to the discriminatory employment action, practice or procedure. Many elements of compensation, in addition to salary or wages, are normally part of a back-pay award (*e.g.,* overtime and premium pay, incentive pay, raises, bonuses, sales commissions, cost-of-living increases, tips, medical and life insurance, fringe benefits, pensions, stock options and awards).

c. *Benefits*. For the benefits portion of the back pay, the CO should gather information about when the benefits became effective (*e.g.,* what is the waiting period?) and the monetary value of the benefits. With sufficient information, benefits may sometimes be calculated as a monetary figure (*e.g.,* employer paid premiums, plus employer contributions to a retirement account amount, to X per year) or as a percentage of wages or salary (*e.g.,* 20 percent of the total compensation package). Where the employer's cost is unknown, survey data related to the cost of benefits, such as the Employer Costs for Employee Compensation survey published by the BLS, should be used to generate an estimate of fringe benefits as a percent of wages.

d. Deductions and Offsets.

1. *Interim Earnings.* If a victim earned money from employment elsewhere during the interim, this amount is deductible from total back pay. Not all financial compensation received by the victim during the back pay period, however, constitutes "interim earnings." For example, if an employee had both earnings from a full-time job and a part-time job, and could have continued in the part-time job even absent the discrimination, the earnings from the part-time job are not deemed interim earnings and are not subtracted from back pay. Additionally, payments from social safety net systems such as unemployment and workers compensation programs are considered a "collateral source" and do not constitute interim earnings.

2. *Mitigation.* Mitigation refers to the duty of the victim to use reasonable diligence in seeking alternative employment during the back pay period. Contractors may seek to reduce back pay awards by the amount the victims could have earned with reasonable diligence, less expenses reasonably incurred in looking for alternative employment (*e.g.,* cost to prepare a resume, gas and parking fees incurred when going for an interview). Reasonable diligence does not mean that the person had to be successful in obtaining other employment, only that he or she must make a reasonable effort. The victim only needs to accept employment that is substantially equivalent to that sought or held with the contractor. The victim does not need to relocate to accept alternative employment.

3. *Burden of Proof.* The contractor bears the burden of proving the amount of interim earnings and the failure of the victim to take reasonable steps to mitigate back pay loss.

e. Periods of Unavailability. Back pay awards do not include periods when the victim would not have been employed even without discrimination (*e.g.,* during periods of unpaid leave or incarceration).

f. Interest on Back Pay.

1. *Purpose and Rate of Interest*. The purpose of applying interest on back pay awards is to compensate the victim(s) for the loss of the use and purchasing power of their income. Interest on back pay is calculated at the same percentage rate as the Internal Revenue Service's (IRS) underpayment formula. Interest on back pay must be compounded quarterly under the laws OFCCP enforces.

2. *Rate Adjustments*. The IRS may adjust its rate on a quarterly basis. The interest rates applicable to various periods are available on the IRS website at https://apps.irs.gov/app/picklist/list/federalRates.html.

g. Withholding of Taxes. Contractors must withhold all applicable federal, state and local income taxes; Federal Insurance Contributions Act (FICA) (social security and Medicare); and Federal Unemployment Tax Act (FUTA) (unemployment insurance) taxes from employment discrimination settlement payments. The contractor's payments of back pay, front pay and lump sum payments made in place of lost fringe benefits are "wages" subject to such tax withholding. Contractors are increasingly asking victims to complete a W-4 form as

a condition of the settlement. This is not a settlement requirement and IRS guidance currently exists that states that an employer can assume a single deduction in the absence of a W-4 form.[367] The contractor must supply the victim(s) with a Form W-2 showing the wage component of the settlement and the amount of taxes withheld. Note, however:

1. *FICA*. FICA requires an employer, as well as an employee, contribution. The employer should not pay its FICA obligation out of a settlement; the employer share must be paid on top of the negotiated back pay.

2. *FUTA*. In almost all states, FUTA (unemployment insurance) taxes are an expense paid only by the employer (*i.e.*, there is no matching employee contribution). Therefore, the employer should not take an offset or deduction for FUTA when computing back pay awards unless the particular state where the affected party was or would have been employed required employers to withhold FUTA taxes from employees' wages or salaries during the time period for which the employer is calculating a back pay award.

3. *Interest*. Interest included in a settlement, if separately stated, is not subject to either FICA or FUTA. While interest is taxable as income to the recipient, just as interest on a bank savings account would be taxable, it is not subject to withholding by the employer. The contractor, however, must supply the victims with the Form 1099 stating the interest component of the settlement.

4. *Benefits*. Since employer contributions to most fringe benefits, such as the employer paid portion of health insurance premiums or pension funds, are not taxable (whether retroactive or not), they are not subject to withholding.

5. *Tax offsets*. In individual cases, a tax offset may be needed to restore the economic position of the victim. If a back pay award causes an individual to be pushed into a higher tax bracket or the cash value of tax-deductible benefits is high, it may be appropriate to include in the remedy a tax offset to make the victim whole. DPO can assist with estimating an appropriate offset amount.

7C07 TIME LIMITS FOR RELIEF

a. *Two-Year Limit*. The victim can obtain back pay for a period beginning two years prior to the date the Scheduling Letter was sent to the contractor via return receipt mail, or two years before the victim filed the complaint. If the discriminatory acts took place less than two years before the Scheduling Letter was sent or the filing of the complaint, back pay is due from the date of violation. Back pay continues from these events until a CA or other voluntary correction stops the discriminatory actions, or until the contractor makes a bona fide offer of the position denied or rectifies the pay disparity. Total back pay can, therefore, be for more than two years.

b. *Bona Fide Offer*. Under appropriate circumstances, the victim's rejection of a bona fide offer of the position previously denied by the contractor terminates the further accrual of back pay

[367] See 26 CFR 31.3402(f)(2)-1(a).

liability. However, interest continues to accrue until settlement on the back pay losses prior to the bona fide offer. A bona fide offer does not require the victim to waive any rights or remedies to which he or she is entitled. For example, the parties may disagree on whether retroactive seniority is appropriate. However, as long as the contractor offers to place the victim in the same job (including shift and location) that was previously denied by the contractor, and do so without requiring that the victim waive any right to seniority, the offer is bona fide. Under these circumstances, the parties can agree to litigate or arbitrate the seniority issue at a later date. If the victim accepts the offer, back pay is still due up to acceptance and front pay continues to accrue for losses suffered as a result of missed promotional opportunities or increased risk of layoff. If the victim rejects a bona fide offer, he or she is not disqualified from receiving back pay; back pay merely cuts off at the date of the offer.

c. *Liability Continuing Beyond the Review Period*. Unless the contractor produces evidence that it has stopped discrimination during the conciliation phase of a compliance evaluation, OFCCP will calculate remedies on the assumption that the discrimination persists and that the liability continues until the contractor enters into a CA or otherwise provides relief to the victims.

d. *Continuing Violation*. If the CO finds a continuing violation,[368] the contractor should provide remedies for the entire period of the violation, but not earlier than the effective date of Executive Order 11246, Section 503 or VEVRAA, as appropriate. However, victims affected by a continuing violation can only recover back pay for the effects of the violation that occur within the period beginning two years prior to the scheduling notice, even when the specific act affecting them occurred outside the two-year period.

7C08 CALCULATION OF BACK PAY IN INDIVIDUAL OR NONSYSTEMIC CASES

In some cases, it may be feasible to calculate individual back pay awards. When it is not, the formula relief method will be used as described in FCCM 7C11. When individual relief is feasible, the CO determines the amount of back pay the contractor will award to victims by calculating, as accurately as possible, the pay the victims would have received if not for the discrimination. The most common way to reconstruct pay is to identify members of the favored group for comparison with affected members of the nonfavored group (or an individual without a disability in a Section 503 case). Proper comparators are those who were hired, promoted, etc., at about the same time the victims of the discrimination should have been hired, promoted, etc. The CO then traces comparators' pay history.

In promotion and compensation cases, the difference between the pay received by the victims and that by the comparators within the appropriate time frame constitutes the back pay due the victims. For hiring cases, the difference between the pay received by the comparators and that by the victims if they exercised reasonable diligence to find alternative employment within the appropriate time frame constitutes back pay due the victims. If there are gaps in the comparators' employment during the back pay period (*e.g.,* the comparators quit, had a lengthy

[368] See FCCM 7B00.

illness), the CO should make a reasonable estimate of the amount of wages the comparators would have made without the break in service.

7C09 CALCULATION OF REMEDIES IN SYSTEMIC DISCRIMINATION CASES

There are two models used to calculate remedies in systemic discrimination cases:

- Victim-specific or individual remedies for identified individual victims of discrimination ("victim-specific remedies"), explained below in FCCM 7C10; and
- Formula relief designed to remedy a class of discrimination victims whereby everyone in the class receives the same remedy ("formula relief"), explained below in FCCM 7C11.

The initial step in fashioning relief is to determine which remedy model to use. Generally, OFCCP will not interchange the elements of the two approaches when providing relief.

7C10 CALCULATING VICTIM-SPECIFIC REMEDIES

a. Approach. The victim-specific model, which provides make-whole relief for identified victims of the discrimination, is used infrequently by OFCCP in systemic discrimination cases. Individualized relief should be sought when it is feasible to identify individual victims, and to calculate their personal losses, interim earnings, mitigation efforts, tax implications and other relevant factors.

b. Remedy Phases. There are two stages to the remedy phase: (1) identifying the specific class members entitled to relief and (2) determining the exact remedy to which each victim is entitled.

1. *Identifying Victims*. The first step in the process is to identify potential victims of the discriminatory policy or practice. In other words, the CO must define the group or class of individuals for whom he or she is seeking relief. Examples include: all blacks who failed an invalidated pass-fail test; all Hispanics who were eligible for supervisory positions, but were not promoted; or all women who were denied reinstatement following maternity leave. In defining the group at this point, the CO should at least refer to what he or she has determined to be the minimum objective qualifications the contractor actually imposed. The CO should not evaluate comparative ("relative") qualifications at the remedy phase as the class consists of all who met the minimum objective qualifications.

2. Computing Lost Earnings. The CO should gather information to compute each individual's specific losses. The type of information gathered depends on the nature of the violation, *e.g.,* failure to hire; wrongful termination; failure to promote, or discriminatory compensation. The information will include, but is not limited to, wages, interim raises, promotion potential, overtime and shift differentials, and any other compensation such as bonuses, stock options and benefits. The CO should also gather information supporting appropriate nonmonetary relief for the victims that may include such relief as priority promotions, and training, counseling and EEO counseling for supervisors.

c. *Contractor's Response.* The CO must inform the contractor of the name of each individual for whom the CO is seeking individualized relief, and the amount of back pay and other forms of make-whole relief necessary to fully remedy each individual. All identified individuals are entitled to relief unless the contractor provides a reason that the individual is not a victim, such as the individual applied outside of the scope of the period at issue. Individuals who are not qualified should have been eliminated from the class at the liability phase. Each person the contractor cannot eliminate from the group of individuals entitled to relief is considered to be an actual, identified victim of discrimination. Even if the contractor cannot eliminate an individual from the group entitled to relief, it may raise defenses to reduce an individual's claim to relief.

d. *Individual Remedies*. The CO must then determine make-whole relief for each individual victim of discrimination. The CO should tailor the precise remedy to the situation of each victim. The CO should be sure to consider all the different types of harm that the victim has suffered. For example, the passage of time since the violation may mean that victims are less interested in reinstatement or hiring because they have built new careers. On the other hand, if very little time has passed since the violation occurred and monetary damages are small, reinstatement or preferential hiring may be a viable remedy.

7C11 CALCULATING FORMULA RELIEF

a. *Definition*. Formula relief is a mechanism by which the CO determines the compensation for the loss suffered by a particular class and then divides the financial compensation (usually, though not necessarily, pro rata) among all the members of that class. Under a formula, it is possible that some individuals will receive less than their total losses and some will receive more. This outcome is the consequence of approximating losses in a situation where it is unrealistic to precisely compute individual losses.

b. *When to Use*. OFCCP will pursue formula relief wherever it is impossible or impractical to determine individual relief; that is, when the number of actual victims of discrimination is large, their identities are unknown or the variables and information needed to calculate individual relief are not available. Sometimes the CO knows the identity of the victims, but it is so difficult to trace their losses and mitigation earnings that the CO can only estimate them. One common situation when the CO uses a formula to determine relief are when the number of class members exceeds the number of vacancies and when it is impossible to determine the class members who would have been selected absent discrimination because the minimum objective qualifications are easily met.

c. *Measuring Losses*. To determine the losses, the CO must take into consideration the components listed below.

   1. *Shortfall Method*. When the number of class members exceeds the total number of opportunities, a "shortfall vacancies" approach is appropriate for computing the amount of back pay for the class. For example, assume a situation where there are 50 black and 50 white applicants, all of whom possess the required qualifications, seeking 20 jobs. Nineteen whites and one black were hired. The difference between the actual number of blacks hired (1) and the expected number of black hires (10) represents the shortfall (9).

Shortfall vacancies do not limit the number of individuals entitled to relief. Instead, the contractor distributes the amount of money attributable to those vacancies to the whole class. In this example, the earnings attributable to the nine shortfall positions will be distributed to the 49 qualified black applicants. Shortfall vacancies are utilized as part of an approximation of class-wide loss.

2. *Averaging Method*. Not all formulas require the CO to look at shortfalls. There are other reasons to use a formula other than the fact that there are more victims than vacancies. For example, suppose there is a case in which the major claim is that the contractor placed the hired men and women into sex-segregated departments. In such a situation, the CO may want to compare the average salary earned by men with a given level of seniority to the average salary earned by women with the same seniority. The difference in average salary defines the measure of back pay to be awarded to each woman in that seniority group. The formula devised should be designed to address the particular violation found.

3. *Computing Lost Earnings*. Because the formula approach represents a compromise, it is extremely important to account fully for all the earnings attributable to a particular vacancy in computing losses such as interest, interim raises, promotion potential (*i.e.*, the earnings associated with all of the promotions the persons would have received had they not been discriminated against in the first place), overtime and shift differential, and any other additions to wages or salary such as bonuses or benefits.

d. *Contractor's Response.* The CO must inform the contractor of the name of each member of the class for whom the CO is seeking formula relief. All affected class members are entitled to relief unless the contractor provides a reason that the class member is not a victim. For example, the class member applied outside of the scope of the period at issue or occurs multiple times in the class list as a duplicate. Individuals who were not qualified should have been eliminated from the class at the liability phase. Each class member the contractor cannot eliminate from the class will receive his or her share of the formula relief. Even if the contractor cannot eliminate an individual from the group entitled to relief, it may raise defenses to reduce an individual's claim to relief.

e. *Distribution of Remedy*. When using the formula approach, the agreed upon remedy is shared by all members of the class. The CO divides the amount of money that represents the group's lost wages among the members of the class either on a pro rata basis or some other equitable basis. The CO may decide on a method of distribution based upon the facts of the case. For example, if the CO identified an incumbent class that was denied promotions or assigned to lower paying jobs, the contractor controlled their interim earnings. In that situation, a distribution based upon the number of months in the employer's workforce might be most appropriate. With a rejected applicant class, the CO might decide that a simple per capita distribution makes more sense.

7C12 NONMONETARY RELIEF

As mentioned above, nonmonetary relief includes corrective actions that stop the policy, practice or procedure that caused the discrimination. Additionally, the CO should, as appropriate, require

nonmonetary remedies, such as preferential hiring or promotion goals or special training programs and EEO counseling for supervisors. With formula relief, it is difficult to provide reinstatement or retroactive promotion because, by using the formula, no individual is tied to any particular opportunity. However, the CO may create a preferential hiring or promotion list consisting of the members of the class, and from which the contractor must make all selections to fill existing vacancies until the number of class members hired is equal to the shortfall or the class member list is exhausted. The contractor must hire class members before nonclass members.

7D NOTIFICATION TO CLASS MEMBERS

The CA or other settlement document must guarantee that all class members are aware of their rights under the agreement and specify the procedures through which those rights will be protected, including counseling, when appropriate. Normally, the contractor must notify all class members of their rights. That notice must include the terms and conditions under which the contractor is tendering an employment offer, including the specific amount of back pay, the retroactive seniority, as well as all other appropriate benefits.

7E LIABILITY OF SUCCESSOR EMPLOYER

In determining whether a successor employer is liable for the discriminatory acts of its predecessor, OFCCP considers whether imposing liability on the successor would be equitable and in keeping with federal policy. OFCCP judges such liability on a case-by-case basis considering the *MacMillan* factors identified in *EEOC v. MacMillan Bloedel Containers, Inc*., 503 F.2d 1086, 1094 (6th Cir. 1974). The nine MacMillan factors are:

- Whether the successor company had notice of the charge;
- The ability of the predecessor to provide relief;
- Whether there has been a substantial continuity of business operations;
- Whether the new employer uses the same plant;
- Whether the employer uses the same or substantially the same work force;
- Whether the employer uses the same or substantially the same supervisory personnel;
- Whether the same jobs exist under substantially the same working conditions;
- Whether the employer uses the same machinery, equipment and methods of production; and
- Whether the employer produces the same product.

The CO should direct requests for a determination of successor liability to RSOL and DPO in the national office. The request should include the contractor's responses, with supporting documentation, to the *MacMillan* factors described in Appendix A-12.

CHAPTER 8
RESOLUTION OF NONCOMPLIANCE

8A INTRODUCTION

This chapter outlines the procedures and documents OFCCP uses to resolve violations COs find during compliance evaluations and complaint investigations. These procedures and documents cover both affirmative action and discrimination violations and apply to all three of the laws OFCCP enforces: Executive Order 11246, as amended; Section 503, as amended; and VEVRAA, as amended.

8A00 APPLICABILITY

COs should consult this chapter whenever they find noncompliance. Unless otherwise specified, the guidelines in this chapter apply to both supply and service and construction contractors.

8A01 REMEDIES

If a CO identifies violations during a compliance evaluation or complaint investigation, the CO must secure remedies or sanctions, or both, to bring the contractor into compliance. COs design remedies for three reasons: to correct the violation, to prevent recurrence of the violation, and to make the victims whole. For a complete discussion of remedies and sanctions, see Chapter 7 of this Manual. Distinctions between remedies and sanctions are discussed below.

a. *Remedy.* Remedies are legally required actions to eliminate the effects of discrimination that include, for example, back pay or reinstatement. Remedies may also be taken or imposed to rectify noncompliance with affirmative action standards. Remember, remedies are corrective, not punitive, and are established in a CA.

b. *Sanctions.* In contrast to remedies, sanctions may be appropriate when a contractor fails to agree to acceptable remedies or fails to implement acceptable remedies for noncompliance. Examples of sanctions may include termination of a contract or debarment. Sanctions may also be appropriate when a violation is egregious or repetitive, or both. Sanctions can only be imposed after an opportunity for a hearing.[369]

8A02 PREPARATION OF DOCUMENTS

COs are responsible for preparing all the documents in this chapter for their compliance evaluations or complaint investigations. To initiate the resolution process, a CO must review the findings and the bases for each of the findings with his or her immediate supervisor. The CO then submits the recommendation and draft documents to the supervisor for review and, using established OFCCP procedures, to the appropriate agency official for approval and signature.[370]

---

[369] EO 11246 secs. 208(b), 303(c); 41 CFR 60-1.26(b), 41 CFR 60-300.66(d), 41 CFR 60-741.66(d).

[370] See the "Signature Authority" section for each document for the official designated authority to sign specific documents. Information on signature authority for CAs is also in FCCM 8H03.

Most notices discussed in this chapter must be sent by certified mail, return receipt requested, in addition to sending a courtesy copy by email or facsimile.

8A03 COMPUTATION OF TIME

When computing the contractor's response date, the CO should begin counting from the day after the date on the return receipt requested form. If the response is received on a Saturday, Sunday or federal holiday, the actual date of receipt would be the next business day. If a CO does not receive a return receipt within five calendar days of mailing, the CO should contact the contractor to confirm the date of receipt and count the days from that date.

8A04 ORGANIZATION OF THIS CHAPTER

This chapter contains 13 sections, Sections A through M. Section A provides basic terms that may be useful and Section B is the first substantive section in this chapter. Section B is an overview of the application of SCNs at various steps in compliance evaluations and complaint investigations, and the documents used to notify contractors and issue an SCN. Section B also reviews the notices used when a CO finds a violation during a compliance evaluation such as a PDN and an NOV. The Manual reviews documents used during complaint investigations, such as a NORI and a Notification of Right-to-Sue, in this section. Among the other documents reviewed here are CAs, documents needed during the monitoring of CAs and the notice to labor unions when a CA affects a Collective Bargaining Agreement.

Section C specifically focuses on the notice to unions, while Section D is dedicated to a full discussion of SCNs. Section E is on PDNs, Section F addresses NOVs, Section G is devoted to conciliation. The remaining sections, K though M are on CAs, post-CA actions, using the 15-day notice, enforcement recommendations, pre and post referral issues resulting from enforcement proceedings and, finally, the types of enforcement proceedings.

8B OVERVIEW OF RESOLUTION AND ENFORCEMENT PROCEDURES AND DOCUMENTS

This section contains flow charts showing the normal sequence of documents COs use in compliance evaluations and complaint investigations. A chart is included for each of the following topics:

- Use of an SCN at Desk Audit (Supply & Service Compliance Evaluations);
- Use of documents in the On-site and Off-site Phases of Compliance Evaluations (Supply & Service, and Construction);
- Use of documents in Complaint Investigations; and
- Use of documents in Monitoring CAs.

The text accompanying these charts references the sections of this Manual where there are detailed discussions of the particular types of violations and of the relevant notices or resolution documents. This includes the location of the sample letters, notices or documents.

8B00 GENERAL USE OF AN SCN

As used in this section, the term SCN includes, as appropriate, an Amended Show Cause Notice (ASCN). An ASCN is used when a CO issues an SCN to the contractor and later finds additional unresolved violations, or finds that some but not all violations were cited in error. The ASCN identifies all the unresolved or current violations.[371]

Also, be aware that if a contractor properly asserts in response to an SCN or ASCN that the CO erroneously issued the notice, the CO must send a letter to the contractor or its representative rescinding the SCN or ASCN.[372]

8B01 USE OF AN SCN AT THE DESK AUDIT (Supply & Service Compliance Evaluations)

COs must recommend issuance of an SCN, as described in Section 8D, at the desk audit stage if the contractor:

- Fails to submit an AAP required by one or more of the laws enforced by OFCCP: Executive Order 11246, Section 503 or VEVRAA;[373]
- Fails to submit an AAP that substantially complies with the regulatory requirements under one or more of the laws enforced by OFCCP: Executive Order 11246, Section 503 or VEVRAA;[374]
- Fails to submit employment activity data or other information requested in the Scheduling Letter;[375] or
- Fails to submit corrected data after providing employment activity data or compensation data, or both, that are incomplete or inaccurate.[376]

---

371 See FCCM 8D04 – When to Use an Amended Show Cause Notice.

372 See FCCM 8D08 – Rescission of a Show Cause Notice.

373 See FCCM 1C – Receipt of AAPs and Itemized Listing Data, FCCM 8D01 – When a Show Cause Notice is Required, and Letter L-26 – Show Cause Notice: Failure to Submit EO 11246, Section 503 or VEVRAA AAPs.

374 See FCCM 8D01– When a Show Cause Notice is Required, FCCM 1F -1I on the acceptability of AAPs and Itemized Listing Data, and Letters L-27 – Show Cause Notice: Failure to Submit an Acceptable EO 11246, Section 503 or VEVRAA AAP, and L-27a – Sample Enclosure to Letter L-27.

375 See FCCM 1C – Receipt of AAPs and Itemized Listing Data for Desk Audit, FCCM 8D01 – When a Show Cause Notice is Required, and Letter L-28 – Show Cause Notice: Failure to Submit Employment Activity and/or Compensation Data for Desk Audit.

376 See FCCM 1F - 1I on the acceptability of AAPs and Itemized Listing Data, FCCM 8D01 – When a Show Cause Notice is Required, and Letter L-29– Show Cause Notice: Failure to Submit Corrected Employment Activity and/or Compensation Data for Desk Audit.

The SCN allows the contractor 30 calendar days from receiving the notice to resolve the violation. Specific actions will be taken by the CO, as described below, depending on whether the contractor resolves the violations.

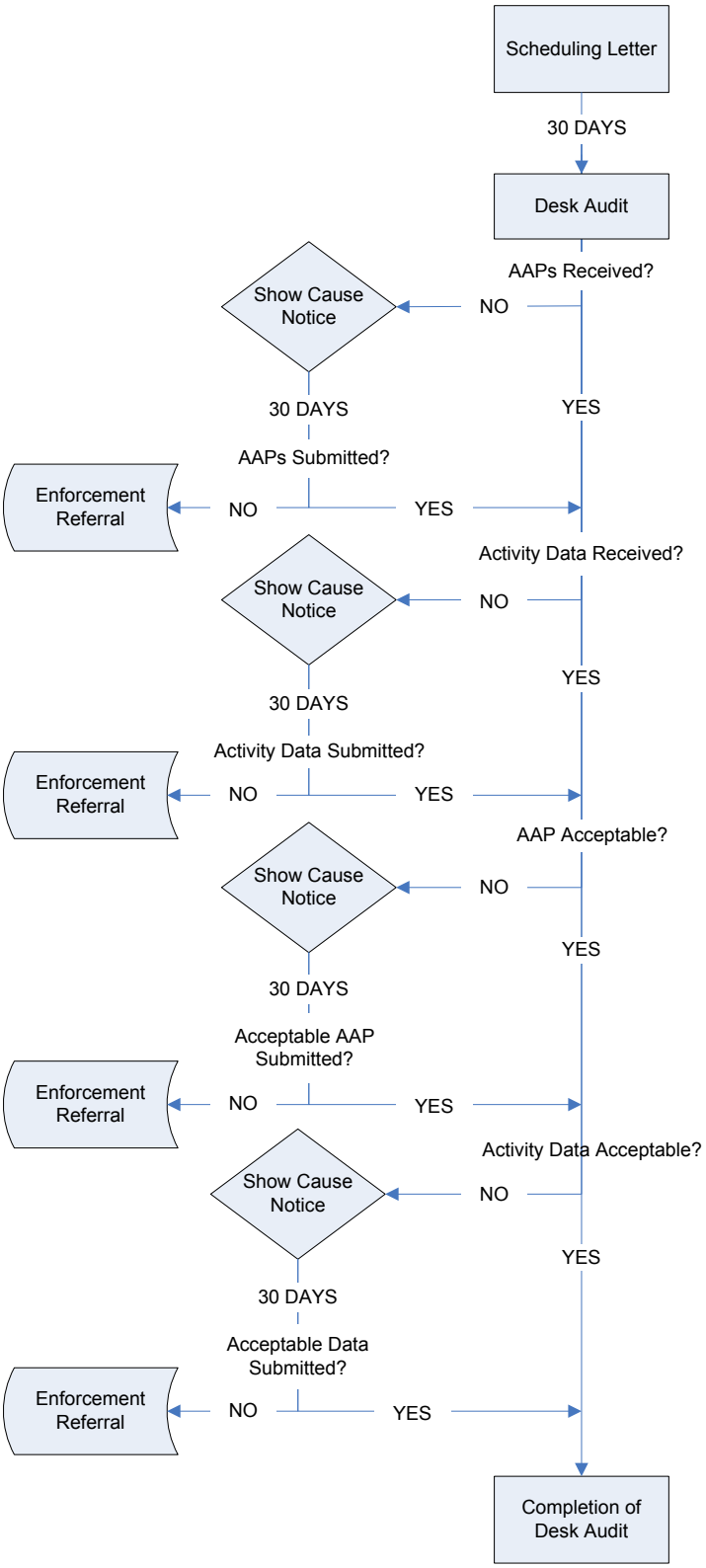
- *Contractor Does Not Resolve Violation.* If the violation is not resolved within the 30-day show cause period, or during a reasonable extension, the CO should recommend enforcement. Enforcement is discussed in detail in Section 8K, Enforcement Recommendation.

- *Contractor Resolves Violation.* If the contractor resolves the violations within the 30-day show cause period by, for example, submitting a reasonable Executive Order 11246, Section 503 or VEVRAA AAP, the review continues with a review of the AAP or moves to the on-site phase. Upon completion of the review, the CO must state the violations identified and for which the contractor has agreed upon a remedy in a CA.[377] Technical violations resolved by the contractor during the course of the review need not be included in the CA, but can be documented in a letter of closure.

[377] See FCCM 8D07(b) – Contractor Response: Resolution in CA.

USE OF SHOW CAUSE NOTICE AT DESK AUDIT

(Supply and Service Compliance Evaluation)



8B02 DOCUMENTS USED IN THE ON-SITE AND OFF-SITE PHASES OF COMPLIANCE EVALUATIONS (Supply & Service and Construction)

Based on the nature of the issue or violation in the on-site and off-site phases, in both Supply & Service and construction evaluations, COs will use different forms or documents. Below is a review of the use of SCNs, PDNs, NOVs and notices to labor unions in various situations.

a. *Denial of Access*. If a contractor denies access to its premises, records or other information necessary to conduct an on-site or off-site review, the CO must issue an SCN or proceed directly to an enforcement recommendation.[378]

b. *Interference with OFCCP*. If a contractor's representative harasses or intimidates a representative of OFCCP during the course of an on-site or off-site review, or unreasonably interferes with the review process, the CO must issue an SCN or proceed directly to an enforcement recommendation.[379]

c. *Finding of a Violation.* If the CO identifies a violation under any of OFCCP's three laws during an on-site or off-site review, the type of notice the CO must issue depends on the nature of the violations.

- *Discrimination Violation.* If the CO identifies employment discrimination, the following notices are appropriate:
  - *PDN.* A CO first issues a PDN to the contractor that describes the indicators of discrimination, as well as any other violations found, and offers the contractor the opportunity to respond.[380] The CO must consult with RSOL, BES, and other appropriate agency personnel in the national office prior to issuing the PDN.
  - *NOV.* If the contractor does not adequately respond to the PDN, a CO issues an NOV after consulting with RSOL, BES, and appropriate agency personnel in the national office.[381] This notice incorporates both the discrimination finding and any other violation, and invites the contractor to participate in the conciliation process.
- *Other Violations*. If a CO identifies no discrimination violations but identifies other violations, such as those involving affirmative action obligations, the CO does not use a PDN. Rather, the CO gives the contractor an initial written notice of the findings in an NOV.

d. *Notice to Labor Union*. If a proposed remedy for a violation requires a change in or otherwise affects a provision of a CBA between the contractor and a labor union, or requires the award of retroactive seniority where the CBA governs, the CO must notify the union of

---

[378] See FCCM 8D01– When a Show Cause Notice is Required.
[379] See FCCM 8D02 – When a Show Cause Notice is Not Required.
[380] See FCCM 8E – Predetermination Notice; Letter L-35– Predetermination Notice.
[381] See FCCM 8F – Notice of Violation; Letter L-36 – Notice of Violation.

the violation and invite the union to participate in the conciliation.[382] If the contractor wants to conciliate after receiving the NOV, the CO must notify the union at that point. Otherwise, the CO must notify the union when the SCN is issued.

e. *Unresolved Violation.* If, after issuing an NOV, reasonable conciliation efforts to resolve all violations fail, the CO issues an SCN for the unresolved violations.[383] The SCN allows the contractor 30 calendar days from receipt of the notice to resolve the violations.

- *Contractor Does Not Resolve Violation.* If the contractor does not resolve the violations within the 30-day show cause period, or with a reasonable extension, the CO must recommend enforcement.

- *Contractor Resolves Violation*. A CA must include resolution of any material violations of any of the three laws OFCCP enforces.[384] When a contractor executes a CA, the CO closes the review with a letter. If the CO issued an SCN and the contractor later entered into a CA, the CO uses Letter L-40, Closure Letter for Substantive Violations (where an SCN was issued). If a contractor executes a CA without the CO issuing an SCN beforehand, the CO uses Letter L-41, Closure Letter for Substantive Violations (no SCN issued).

---

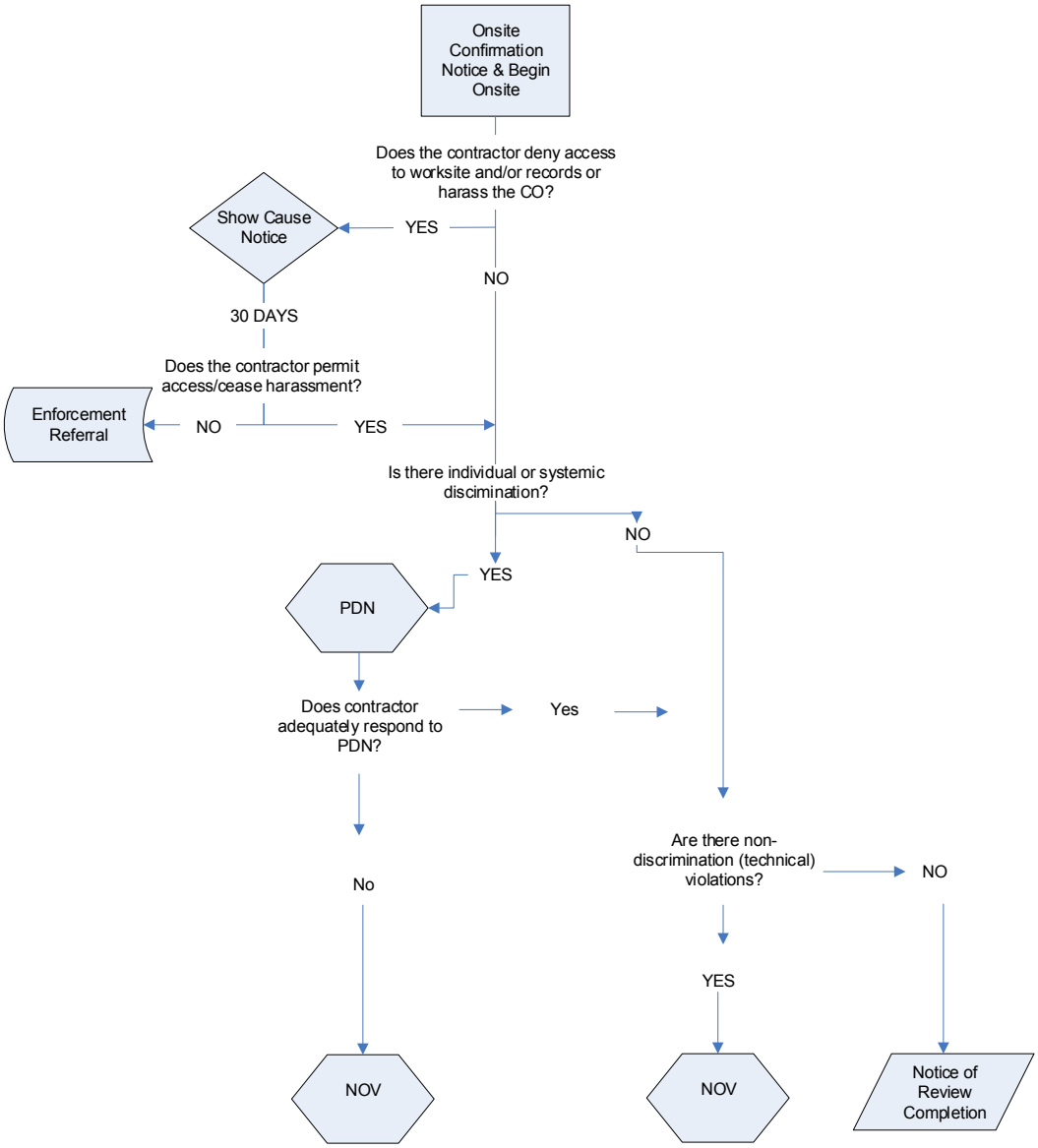
[382] See FCCM 8C – Notice to Labor Union.

[383] See FCCM 8D01– When a Show Cause Notice is Required, Letter L-30 – Show Cause Notice: Unresolved Violations, and Letter L-30a – Sample Enclosure to Letter L-30.

[384] See FCCM 8H – Conciliation Agreements.

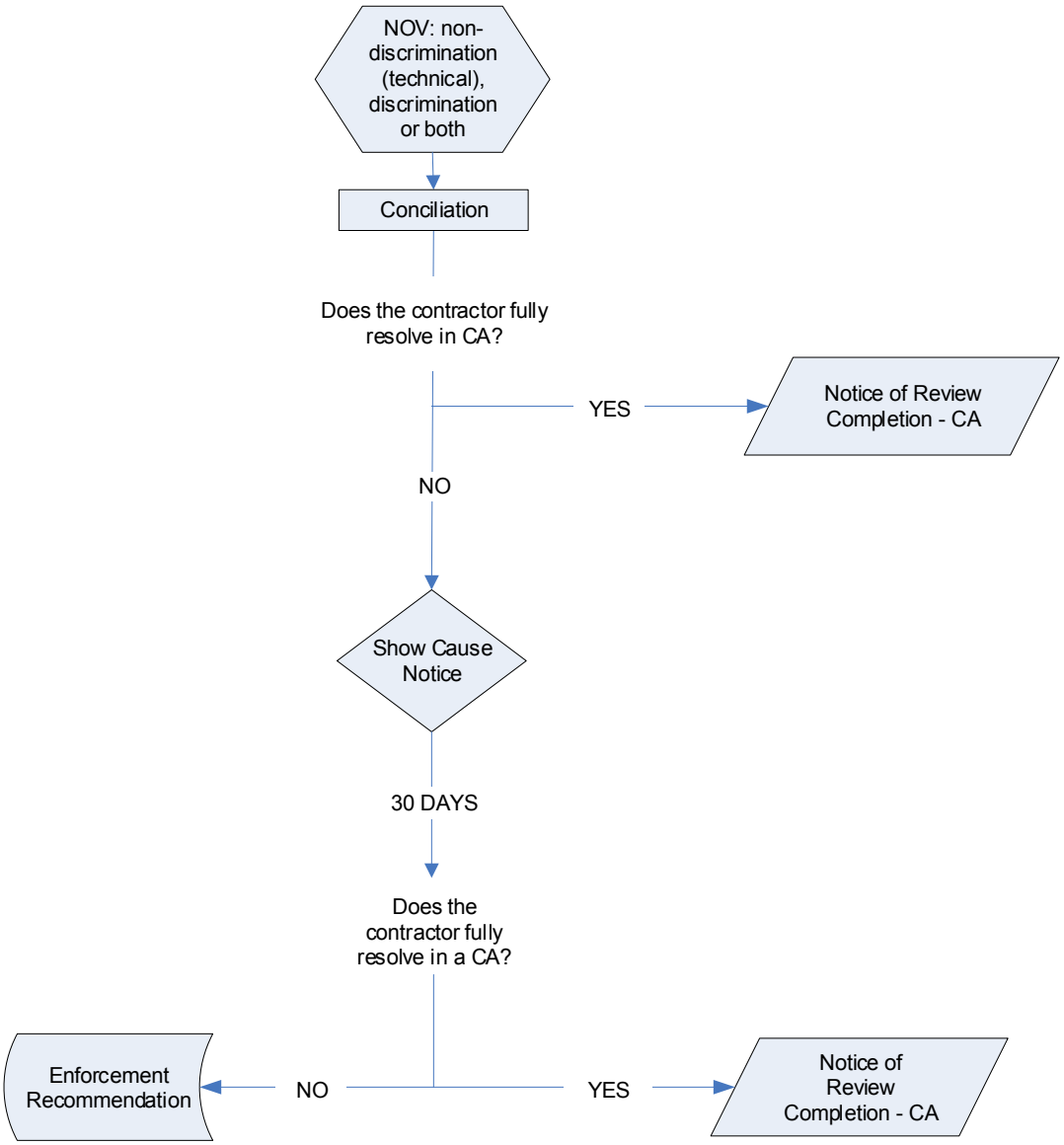
DOCUMENT ISSUANCES DURING ONSITE/OFFSITE COMPLIANCE EVALUATION PHASES

(Supply and Service and Construction)



DOCUMENT ISSUANCES DURING ONSITE/OFFSITE COMPLIANCE EVALUATION PHASES

(Supply and Service and Construction)
(continued)



8B03 DOCUMENTS USED IN COMPLAINT INVESTIGATIONS

Based on the nature of the issue or violation in a complaint investigation, COs will use different forms or documents. Below is a review of the use of SCNs, NORIs, Notifications of Right-to-Sue and notices to labor unions in various situations.

a. *Denial of Access.* If a contractor denies access to its premises, records or other information necessary to conduct an investigation of a complaint, OFCCP may issue an SCN.[385]

b. *Interference with OFCCP.* If a contractor's representative intimidates or harasses a representative of OFCCP during the course of a complaint investigation, or unreasonably interferes with the investigation, a CO may issue an SCN or proceed directly to an enforcement recommendation.

c. *Transmittal of Investigation Findings.* COs transmit the findings of a complaint investigation to the complainant and the contractor through the NORI. The contractor and complainant are issued a NORI-Violation if a complaint investigation results in a finding of a violation and the complaint is not resolved.[386] In this notice, OFCCP offers to meet with the contractor to attempt to resolve the violations through conciliation. If the CO finds "no violation," he or she issues the contractor and complainant a NORI-No Violation.[387]

d. *Notification of Right-to-Sue.* If a complaint is dual filed under Section 503 and the ADA, as amended; or under Executive Order 11246, as amended, and Title VII, as amended; and there is no violation finding, the Notice of Right-to-Sue accompanies the notification of closure.[388] In addition, if a complainant requests a Notice of Right-to-Sue in writing before 180 calendar days passes, and the Regional Director, or designee, can foresee that the investigation will extend beyond the 180th day, the Regional Director, or designee, will issue the notice within 10 calendar days to the complainant.[389]

e. *Notice to Labor Union.* If make-whole relief for the complainant requires a change in or otherwise affects a provision of a CBA between the contractor and a labor union, COs notify the union of the violation and invite the union to participate in the conciliation.[390] An example of make-whole relief that might require a change in the CBA is an award of retroactive seniority.

---

385 See FCCM 8D01 and 8D02.

386 See FCCM 6K and Letter L-25– Notification of Results of Investigation: Violation.

387 See FCCM 6L; and Letter L-21 – Notification of Results of Investigation: No Violation (Complaint Not Dual Filed), Letter L-22 – Notification of Results of Investigation: No Violation (Dual Filed), and Letter L-22 Enclosure–Notice of Right-to-Sue Under Title 1 of the ADA or Title VII of the Civil Rights Act of 1964: No Violation. Appendix A-11 – Information Related to Filing Suit under Title VII and Title I of the ADA must also be included with L-22.

388 See FCCM 6L02 – Closure of Complaint with No Violation.

389 See FCCM 6L03 – Closure of Complaint and Issuance of "Notice of Right-to-Sue."

390 See Section 8C – Notice to Labor Union.

f. *CA*. This binding agreement is the result of negotiations between the CO and contractor to resolve findings of noncompliance.

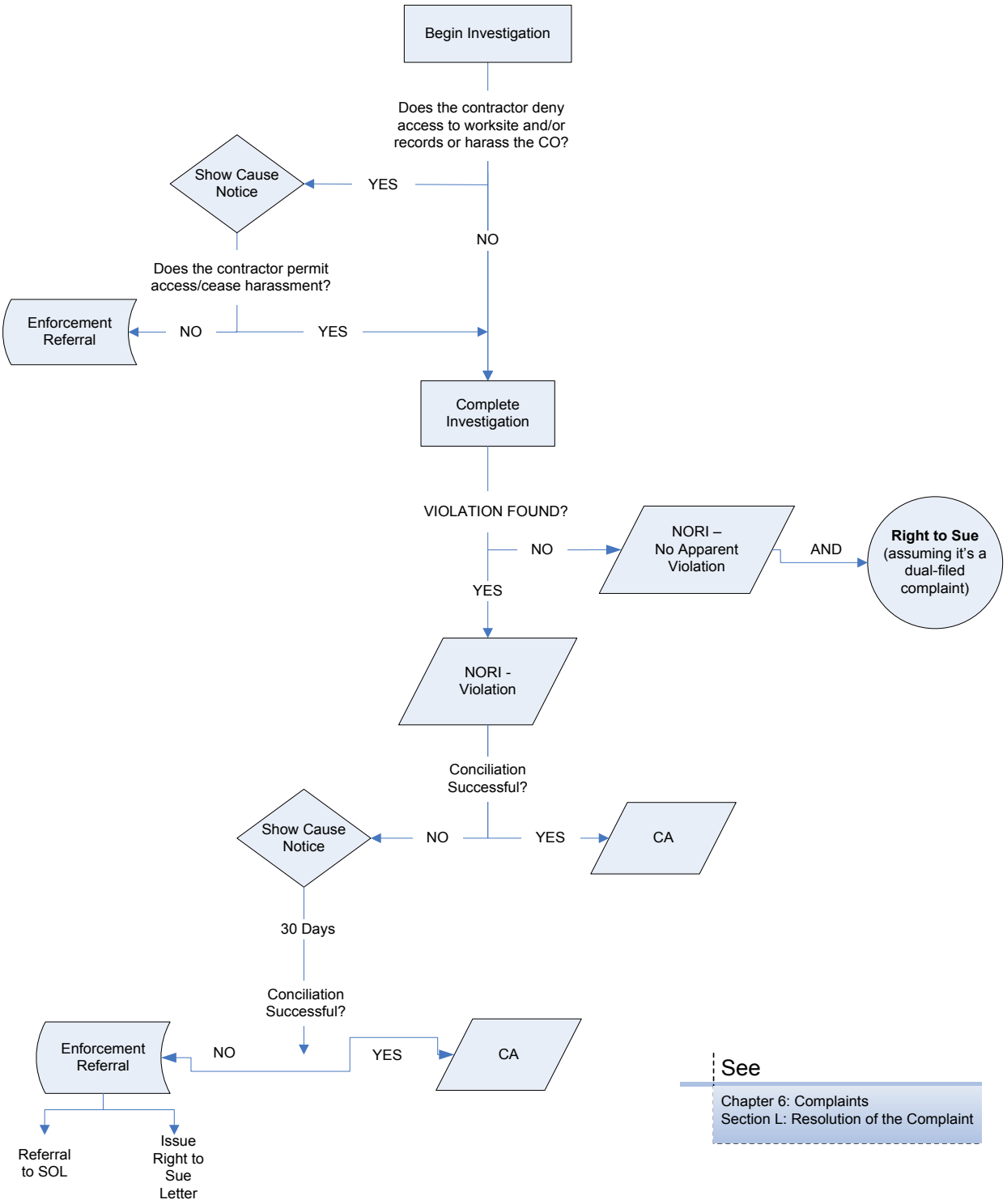
- *Conciliation Successful.* The contractor must resolve, in a CA, any finding of violation in a complaint investigation, whether individual or class, under any of the three laws OFCCP enforces.

- *Conciliation Unsuccessful*. If, after reasonable time and effort, OFCCP and the contractor cannot agree to the resolution of the identified violation, the CO must issue an SCN. If the contractor and OFCCP do not reach a settlement within the 30-calendar-day show cause period, or reasonable extensions thereof, the CO must recommend enforcement.[391]

[391] See FCCM 8K – Enforcement Recommendations.

COMPLAINT INVESTIGATION

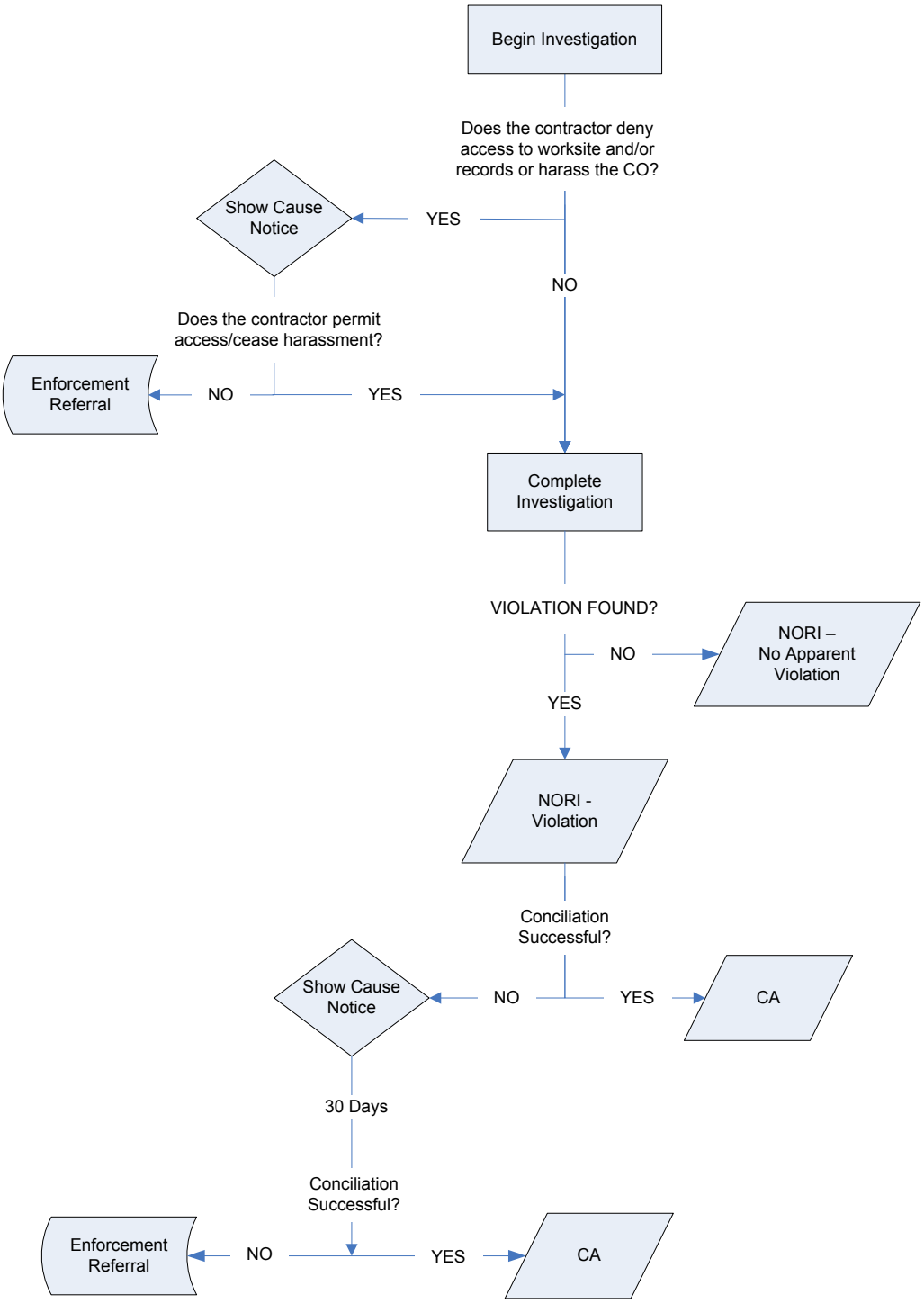
(EO 11246 & Section 503)



See

Chapter 6: Complaints
Section L: Resolution of the Complaint

COMPLAINT INVESTIGATION
(VEVRAA)



See

Chapter 6: Complaints
Section L: Resolution of the Complaint

8B04 DOCUMENTS USED IN MONITORING CAs

Once executed, a CA is monitored by the CO and the contractor submits progress reports for review. This subsection reviews the documents involved in monitoring a CA, such as a 15-Day Notice.

a. *Contractor Does Not Submit a Progress Report.* If a contractor fails to submit a progress report due under a CA within five days following the due date (unless a reasonable extension has been requested), or if the CO's review of such a report shows a violation of the CA, the contractor has violated or breached the CA. The following actions are taken:

   - *No Irreparable Injury.* In a no irreparable harm case, the CO issues the contractor a 15-Day Notice. The Notice provides 15 calendar days for the contractor to respond. The notice states the violations and summarizes the supporting evidence. The CO sends the notice by certified mail, return receipt requested; however, email or facsimile are permissible if confirmation of delivery and/or transmission is documented.[392]

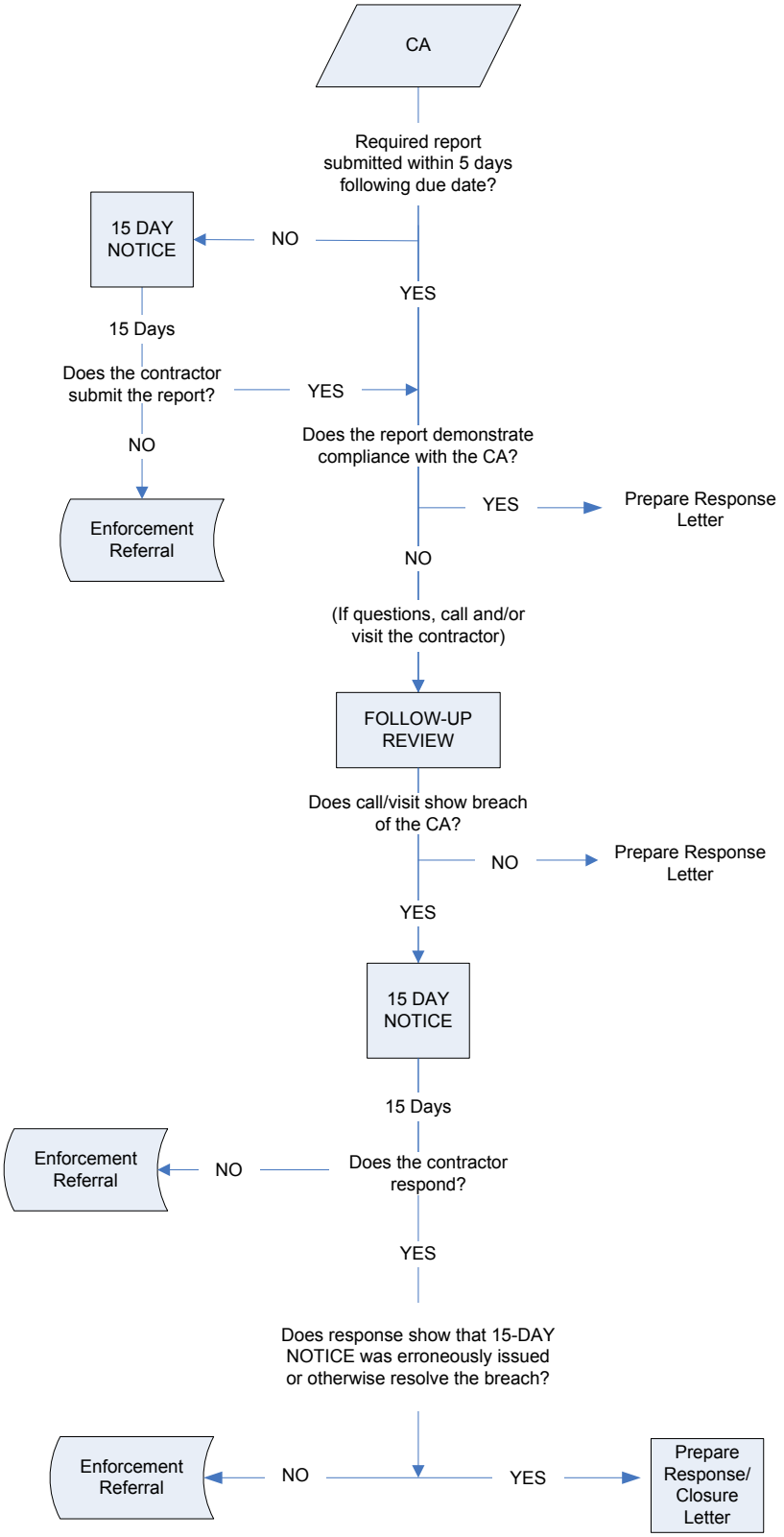
   - *Irreparable Injury.* When irreparable injury would result from the 15-day delay, the CO does not issue a 15-Day Notice. Rather, the appropriate Regional Director, after obtaining appropriate approval, verbally informs the contractor of OFCCP's intent to proceed immediately to enforcement. This verbal notice is then followed by a written confirmation the CO sends by certified mail, return receipt requested; however, email or facsimile are permissible if confirmation of delivery and/or transmission is documented.[393]

b. *Enforcement Recommendation*. If the contractor does not demonstrate in writing that it is in compliance with the CA, or if contractor does not resolve the breach within the 15-calendar-day period or reasonable extensions thereof, the CO must recommend the matter for enforcement. In such a situation, there is no need for the CO to issue an SCN. Also, in enforcement proceedings alleging a breach of CA, the agency seeks enforcement of the terms of the CA and is not required to present proof of the original violations that led to the CA.

---

[392] See FCCM 8J01– Procedure Where No Irreparable Injury Exists.
[393] See FCCM 8J02 – Procedure Where Irreparable Injury Exists.

CONCILIATION AGREEMENT (CA) MONITORING



8C NOTICE TO THE LABOR UNION OF A PROPOSED REMEDY

This section reviews when a notice to the labor union of a remedy that affects a CBA is required and the timing for COs providing that notice. It also provides COs information and tools related to the:

- Content of the notice;
- Addressees for the notice;
- Signatory on the notice; and
- Union responses to the notice.

The first subsection reviews the use of a notice to the union.

8C00 WHEN TO USE A NOTICE TO THE LABOR UNION

Notice to a labor union is required when a CO proposes a remedy that affects the CBA. When a CO proposes a remedy for a violation that is identified in the course of a compliance evaluation or complaint investigation that requires a change in or otherwise affects a CBA between the contractor and a labor union, the CO must notify the union in writing of the violation and invite the union to participate in the conciliation process. A remedy affecting a CBA is one requiring the modification, deletion or exception to an existing provision, or the addition of a new provision. The following are examples of some remedies that may impact the terms of a current CBA:

- Retroactive seniority;
- Temporary suspension of promotion or transfer provisions, or both; or
- Institution of or modification to a job posting process that applies to a workforce, job group or position covered by the CBA.

In a compliance evaluation, the CO sends this notice to the union if the contractor indicates that it wants to conciliate after receiving the NOV. Otherwise, the CO sends notice to the union when it issues the SCN. In a complaint investigation, the CO sends the notice to the union at the same time he or she sends the NORI to the contractor.

8C01 CONTENTS OF THE LABOR UNION NOTICE

If the proposed remedy affects a CBA, a CO's written notice to the union will:

- State the violation;
- Describe the portions of the proposed remedy which may affect the CBA; and

- Invite the union to participate in negotiation of the portion(s) of the proposed remedy that may impact the CBA.

8C02 WHO RECEIVES THE LABOR UNION NOTICE

The CO sends the notice to the president of the applicable union local by certified mail, return receipt requested; however, email or facsimile are permissible if confirmation of delivery and/or transmission is documented. A copy of the notice is also sent to the contractor.

8C03 SIGNATURE AUTHORITY

The Regional Director, or designee, has signature authority for the notice to the union.

8C04 UNION'S RESPONSE TO THE NOTICE

FCCM 7C04 and 7C05 provide further background and guidance on union involvement in the conciliation process.[394] Although subsection 7C04 deals specifically with retroactive seniority as a remedy affecting a CBA, the description of procedures there are equally applicable to other remedies affecting a CBA. Below are the two typical union responses in the conciliation context:

a. *Union Participation in Conciliation.* If the union agrees to participate in conciliation, then it may participate on issues affecting the CBA. If conciliation is successful, the CO should ask the president of the union local to sign the CA.[395]

b. *Union Refuses to Participate or Refuses to Sign CA.*[396] If the union refuses to participate in conciliation, or participates but will not agree to the proposed relief affecting the CBA by signing the CA, the CO will not include the nonadmissions clause in the CA. The nonadmissions clause is in paragraph 3 of the standard CA text, as described in FCCM 8H0l. Under such circumstances, the CO shall amend paragraph 1 of the standard CA text to reference that the union was invited to participate and its refusal to participate or to sign.[397]

8D SHOW CAUSE NOTICE

An SCN is a letter issued to the contractor ordering it to show cause why enforcement proceedings should not be instituted. The SCN requires the contractor to come into compliance within 30 calendar days or the CO will recommend the commencement of enforcement proceedings.

---

394 COs may also find it helpful to consult their RSOL on these issues.
395 See FCCM 8H03 – Signature Authority.
396 Also see FCCM 7C04(f) – Other Methods for Addressing Retroactive Seniority.
397 See FCCM 8H0l – Contents of a Conciliation Agreement.

8D00 APPLICABILITY

SCNs pertain to violations of Executive Order 11246,[398] Section 503,[399] and VEVRAA.[400]

8D01 WHEN AN SCN IS REQUIRED

As a general rule, COs must issue an SCN whenever a contractor violates Executive Order 11246, Section 503, VEVRAA or their implementing regulations in order to proceed with an enforcement action. In certain circumstances, OFCCP may proceed directly to enforcement without issuing an SCN. This practice is discussed later in FCCM 8D02, When a Show Cause Notice is Not Required.

COs issue SCNs in all cases after conciliation fails. However, SCNs can be issued to a supply and service contractor at the desk audit stage. COs issue an SCN at the desk audit stage when the contractor fails to provide the records, information or data requested in the Scheduling Letter. For example, a CO must issue an SCN when a contractor:

- Fails to submit an AAP required by one or more of the laws enforced by OFCCP: Executive Order 11246, Section 503 or VEVRAA;[401]
- Fails to submit an AAP that substantially complies with the regulatory requirements under one or more of the laws enforced by OFCCP: Executive Order 11246, Section 503 or VEVRAA;[402]
- Fails to submit employment activity data or other information requested in the Scheduling Letter;[403] or
- Fails to submit corrected data after providing employment activity data or compensation data, or both, that are incomplete or inaccurate.[404]

---

398 See 41 CFR 60-1.28, 60-2.2(c) and 60-4.8.
399 See 41 CFR 60-741.64.
400 See 41 CFR 300.64.
401 See FCCM 1C – Receipt of AAPs and Itemized Listing Data, FCCM 8D01 – When a Show Cause Notice is Required, and Letter L-26 – Show Cause Notice: Failure to Submit EO 11246, Section 503 or VEVRAA AAPs.
402 See FCCM 8D01– When a Show Cause Notice is Required, FCCM 1F -1I on the acceptability of AAPs and Itemized Listing Data, and Letters L-27 – Show Cause Notice: Failure to Submit an Acceptable EO 11246, Section 503 or VEVRAA AAP, and L-27a – Sample Enclosure to Letter L-27.
403 See FCCM 1C – Receipt of AAPs and Itemized Listing Data for Desk Audit, FCCM 8D01 – When a Show Cause Notice is Required, and Letter L-28 – Show Cause Notice: Failure to Submit Employment Activity and/or Compensation Data for Desk Audit.
404 See FCCM 1F - 1I on the acceptability of AAPs and Itemized Listing Data, FCCM 8D01 – When a Show Cause Notice is Required, and Letter L-29– Show Cause Notice: Failure to Submit Corrected Employment Activity and/or Compensation Data for Desk Audit.

COs also issue an SCN when a contractor refuses to provide access to its premises for an on-site review, or refuses to provide access to records or other information necessary to conduct an on-site or off-site review.[405]

8D02 CIRCUMSTANCES WHEN AN SCN IS NOT REQUIRED

OFCCP may proceed directly to an enforcement recommendation without issuing an SCN in certain situations, such as when a contractor intimidates or harasses an OFCCP agent, or unreasonably interferes with a complaint investigation or compliance review. If the CO believes that the circumstances warrant moving directly to an enforcement recommendation without issuing an SCN, his or her District Director must seek the approval of the Regional Director. The Regional Director, prior to approving this action, should consult with RSOL.

A CO is not required to issue an SCN when a contractor violates a CA. Under such circumstances, OFCCP issues a 15-Day Notice.[406]

8D03 CONTENTS OF AN SCN

An SCN, including an ASCN, may have two parts, the notice and an enclosure.

a. *Notice.* The Notice itself which states the consequences under the regulations of not coming into compliance.

b. *Enclosure.* An enclosure states the violation and the required remedies. The statement of the violation should include appropriate regulatory citations. This approach also applies to the nondiscrimination and affirmative action provisions of the appropriate equal opportunity clauses. The appropriate format of an SCN will depend on the particular situation. FCCM 8D01 lists violations for which COs should issue an SCN and includes references to the letters that provide the format for each type of violation.

8D04 WHEN TO USE AN AMENDED SHOW CAUSE NOTICE

When a CO issues an SCN and subsequently identifies additional violations, the CO must issue an ASCN incorporating all violations, including the original ones. An ASCN must also be issued when the first SCN included violations in error. The CO may issue more than one ASCN.

For example:

- *Supply and Service Contractors.* If a CO issues an SCN at desk audit for failure to submit an Executive Order 11246 AAP, and the contractor then submits an unreasonable Executive Order 11246 AAP, the CO may issue an ASCN citing both the initial failure to submit and the subsequent unreasonable submission. If the contractor then submits a reasonable Executive Order 11246 AAP, but the CO identifies additional violations during the on-site review, the CO may issue a second ASCN citing all violations to date.

---

[405] See Letter L-33 – Show Cause Notice: Denial of Access.
[406] See FCCM 8J –The 15-Day Notice.

Just as an ASCN includes all violations, including those the CO cited in the original SCN, the CO uses a single CA to resolve all outstanding violations, regardless of when in the review the CO identified a particular violation.

A sample ASCN is provided in Letter L-32. An ASCN is sent to the same people as an SCN, has the same signature authority as the original SCN unless the Regional Director delegates otherwise, and follows the same procedures concerning contractor responses.[407]

8D05 WHO RECEIVES AN SCN OR ASCN

COs send the SCN, or ASCN, to the top official at the establishment under review, or the top official of the construction company in the economic area being reviewed. A copy of the SCN is sent to the CEO if the establishment or construction company is part of a larger corporation. If the contractor submits a written request that the CO provide a copy of the review or investigation correspondence to an outside representative such as an outside counsel or consultant, the CO will also send a copy to the designated representative. When the CO provides a copy to a corporate CEO, other contractor official or a designated representative, the CO should include a "cc:" line on all copies indicating the people to whom he or she sent the Notice.

COs must always send SCNs or ASCNs by certified mail, return receipt requested. An additional copy may also be sent by email or facsimile.

8D06 SIGNATURE AUTHORITY

The Regional Directors, or their designees, have signature authority for an SCN and ASCN.

8D07 CONTRACTOR'S RESPONSE

This subsection covers the period of time the contractor has to respond to an SCN and ASCN, and resolution of the violations through a CA.

a. *Period for Response.* The contractor has 30 calendar days from the date it receives the SCN or ASCN to either adequately respond to or resolve the violations the CO specified in the SCN or ASCN.

b. *Resolution in CA.* Because violations generating an SCN or ASCN are usually significant, a CA is used to show how the violations were resolved. This is the case unless the contractor is able to demonstrate that it is exempt from OFCCP's requirements or that OFCCP's allegations are incorrect. The contractor may, therefore, take any of the following actions in response to an SCN or ASCN:

- *Contractor Resolves the Violation.* The contractor may resolve a violation by:

[407] See FCCM 8D05, 8D06, and 8D07.

  - Entering into a written CA that remedies the violation, including the provision of make-whole relief for any victims of discrimination;[408]
  - Demonstrating that it is exempt from OFCCP's requirements; or
  - Demonstrating that OFCCP's allegations are incorrect.

- *Contractor Does Not Resolve the Violation.* If the contractor does not resolve all of the violations stated in the SCN or ASCN, the CO will normally recommend the initiation of enforcement proceedings as described in Section 8K of the chapter. Under these circumstances, the Regional Director must authorize any decision not to refer the contractor for enforcement and must document the reason for the decision in the case file.

8D08 RESCISSION OF AN SCN

This subsection reviews when a CO can rescind an SCN, the contents of the rescission, who signs the notices and who should receive them. Each item is reviewed below.

a. When to Use an SCN Rescission Letter. An SCN will not be rescinded merely because the contractor agrees to comply in the future or corrects violations. See 41 CFR 60-1.20(b), 60-4.8 and *Castillo v. Usery*, 14 Fair Empl. Prac. Cas. 1240, 1247 (N.D.Ca1. 1976). A CO may rescind an SCN or ASCN only if the SCN or ASCN was issued erroneously. For example:

- The contractor demonstrates that it is exempt from OFCCP's requirements; or
- The contractor demonstrates that each of OFCCP's allegations in the SCN is incorrect.

b. Contents. The notice rescinding the SCN or ASCN acknowledges that the SCN or ASCN was issued and the date it was issued, the authority under which it was issued, and that it was subsequently determined that the SCN or ASCN was erroneously issued and is being rescinded for one of the above reasons, or other appropriate reason. Letter L-34 provides a sample format for rescinding an SCN or ASCN.

c. Who Receives the Rescission Letter. COs send the letter rescinding an SCN or ASCN to the same people who received the original notice.

d. Signature Authority. The Regional Director signs the letter rescinding an SCN or ASCN. This authority may not be delegated without express approval from the national office.

8E PREDETERMINATION NOTICE

A PDN is the letter a CO must use to notify the contractor of the preliminary finding that the contractor engaged in individual or systemic discrimination. The PDN states the basis for the preliminary findings and offers the contractor the opportunity to respond. This section covers

[408] See FCCM 7B.

when COs use a PDN, the contents of the notice, who receives the notice and who has signature authority for issuing the notice.

8E00 USE OF A PDN

COs must use a PDN in discrimination cases following compliance evaluations conducted under Executive Order 11246, Section 503 and/or VEVRAA.[409] The PDN must describe the indicators of discrimination and any other violations found, affording the contractor the opportunity to respond. COs should not use a PDN in cases in which there are only recordkeeping or affirmative action deficiencies, such as a failure to meet the standards for AAP acceptability. [410] The CO must consult with RSOL, BES, and other appropriate agency personnel in the national office prior to issuing the PDN.

After a CO identifies preliminary indicators of discrimination, the CO must notify the contractor through a PDN before issuing an NOV.

8E01 CONTENTS OF A PDN

The PDN typically has three parts: a description of any indicators of discrimination, a list of any other unresolved violations, and an offer of an opportunity to respond to the PDN with additional information or evidence. These three parts are described in more detail below. Letter L-35, Predetermination Notice, is a sample form letter for a PDN.

a. *Description of the Discrimination.* In this, the first part of the PDN, a CO describes all discrimination findings. This description will include identification of the discrimination victim(s), *e.g.,* the affected class or individual(s); the employment action(s) giving rise to the preliminary findings; and the basis for the liability determination (*e.g.,* disparate treatment in the selection of minority technicians). The PDN should also include facts and the results of analyses that support the preliminary determination and recommended remedies. Typically, the PDN includes the magnitude of the impact in terms of shortfalls or pay disparities and the measure of statistical certainty (*e.g.,* standard deviation).

b. *Other Unresolved Issues.* After describing the discrimination findings, a CO identifies and addresses other unresolved deficiencies, such as affirmative action deficiencies that did not result in an "acceptable AAP" finding. A CO also identifies and addresses recordkeeping and technical violations, such as the contractor's failure to post required notices.

c. *Offer the Contractor the Opportunity to Respond.* The PDN offers the contractor an opportunity to respond in writing within 15 calendar days.

If, after the receipt of a PDN, the contractor does not respond by the indicated date or obtain an extension, the CO will issue an NOV incorporating the preliminary findings after consultation with RSOL, BES, and other appropriate agency personnel in the national office.[411] The NOV

---

[409] See Letter L-35 – Predetermination Notice.
[410] See FCCM 8E – Predetermination Notice; Letter L-35– Predetermination Notice.
[411] See FCCM 8F.

will indicate that the contractor did not respond and/or did not rebut the discrimination issue (or any other issues raised in the PDN).

8E02 WHO RECEIVES A PDN

COs address PDNs to the top official at the establishment under review or the top official of the construction company in the economic area being reviewed. A copy is sent to the CEO of the corporation if the establishment or construction company is part of a larger corporation. If the contractor has submitted a written request that the CO provide a copy of the review or investigation correspondence to an outside representative such as an outside counsel or consultant, the CO will also send a copy to the designated representative. If the contractor requests that the CO provide the representative with the document, the CO should send a copy to the top official at the establishment and the CEO. When the CO provides copies to a corporate CEO, another contractor official or a designated representative, the CO will include a "cc:" line on all copies indicating the people to whom the PDN was sent.

COs always send a PDN by certified mail, return receipt requested, and email or facsimile.

8E03 SIGNATURE AUTHORITY

The Regional Director, or designee, has signature authority for a PDN.

8E04 CONTRACTOR'S RESPONSE TO A PDN

If the contractor does respond to the PDN, the CO should review the presented information. If there are issues requiring further investigation, the CO should request and analyze the additional information, as needed. The CO may conduct further investigation on-site or through an off-site review of records. The CO should determine whether the contractor's response satisfactorily rebuts some or all of the allegations of discrimination in the PDN. For example, does the PDN response provide a legitimate, nondiscriminatory explanation (that is, an explanation that is not a pretext for discrimination) for alleged disparate treatment? The CO should also determine whether the contractor's response satisfactorily rebuts any other violation findings made in the PDN. In evaluating the response, the CO should remember that unsupported contractor assertions, or assertions that the CO previously fully considered, are not sufficient to rebut findings of discrimination.

A contractor may respond to the PDN in one of three ways: with a full rebuttal of all the issues, with a partial rebuttal or with an inadequate rebuttal.

a. *Contractor Adequately Rebuts.* If the contractor's response adequately rebuts all of the preliminary findings in the PDN and there are no other remaining issues, the CO will acknowledge acceptance of the response and issue an appropriate closure document.[412]

b. *Some Issues Rebutted.* If the contractor's response adequately rebuts some, but not all, of the preliminary findings in the PDN, the CO should issue an NOV accepting the response in

[412] See Letter L-5 – Notice of Closing: No Violation Found.

those areas where it was sufficient. The CO should address the remaining findings of violations with recommended corrective actions.

c. *All Issues Inadequately Rebutted.* If the contractor's response does not rebut any of the preliminary findings in the PDN, the CO should acknowledge the response. The acknowledgment should also explain that the contractor's response did not sufficiently rebut the preliminary findings and give an appropriate explanation. The CO should incorporate the PDN's findings and recommended corrective actions into an NOV.

8F NOTICE OF VIOLATION

An NOV is a letter to a contractor notifying it that, during a compliance evaluation, a CO found violations of one or more of the laws enforced by OFCCP; specifically, Executive Order 11246, Section 503 or VEVRAA. The NOV also notifies the contractor that it must take corrective actions to resolve the violations. The CO must include all violations requiring corrective action, including findings of discrimination and violations of affirmative action obligations or other requirements, along with the recommended corrective actions. The NOV will indicate the reasons for each finding and, if appropriate, note the contractor's failure to adequately justify its actions.

8F00 WHEN TO USE AN NOV

The NOV letter identifies the violations and describes the recommended corrective actions. COs issue an NOV whenever discrimination or other significant violations are found, unless an SCN or ASCN informing the contractor of the violations found and the corrective actions needed was previously issued.

a. *NOV for Findings of Discrimination.* An NOV is issued when OFCCP determines, based on its investigation, that sufficient evidence to find discrimination exists and a PDN has been issued. The CO proceeds to an NOV where the contractor does not respond to the PDN or its response does not substantially alter a CO's preliminary determination of employment discrimination. Before issuing an NOV in a systemic discrimination case, the CO must consult with RSOL.

b. *NOV for Other Violations.* An NOV is issued when a CO identifies other, nondiscrimination violations. Examples of other violations include lack of appropriate outreach and recruitment efforts or a failure to comply with recordkeeping requirements.

8F01 CONTENTS OF AN NOV

NOVs, issued by COs, initiate the conciliation and resolution process. The NOV should request that the contractor contact the appropriate field office within 5 business days of receipt of the NOV. The NOV should identify the CO or other OFCCP representative who the contractor should contact and provide the contact information, including telephone numbers. Letter L-36, Notice of Violation, is a sample form letter for an NOV. NOVs issued by COs must:

1. *State the Violation(s)*. State the violation(s) and, if a PDN was previously issued, indicate any modifications to the violation(s) resulting from the contractor's response. Include specific facts and, where applicable, the results of analyses that support the violation(s).

2. *Analyze the Response.* If a PDN was previously issued and the contractor responded to it, analyze the contractor's response, giving the reasons why it did not fully rebut OFCCP's preliminary determination.

3. *Describe the Corrective Action and Remedy.* Describe the corrective action and any proposed remedy. Include the scope of relief (*e.g.,* all minorities rejected for Technician positions since (date) will be made whole by providing), the type of relief (*e.g.,* job offers, back pay) and, when relevant, the time period involved (*e.g.,* back pay from date of application to date of settlement).

4. *Cease Discrimination.* If discrimination was found, specifically require termination of the identified discriminatory practice(s) if the contractor has not already terminated the practice.

5. *Require CA*. Indicate that a CA must incorporate the resolution of the violation(s) cited in the NOV.

8F02 WHO RECEIVES THE NOV

COs address an NOV to the top official at the establishment under review, or the top official of the construction company in the economic area being reviewed. A copy is sent to the CEO of the corporation, if the establishment or construction company is part of a larger corporation. If the contractor has requested in writing that the CO provide a copy of the review or investigation correspondence to an outside counsel or consultant, the CO will also send a copy to the designated representative. When the CO provides copies to a corporate CEO, other contractor official, or a designated representative, the CO will include a "cc:" line on all copies indicating the people to whom the CO sent the NOV.

The CO always sends an NOV via email or facsimile, and certified mail, return receipt requested.

8F03 SIGNATURE AUTHORITY

The Regional Director, or designee, has signature authority for an NOV.

8F04 CONTRACTOR'S RESPONSE TO AN NOV

If the contractor responds to the NOV, the CO should review and evaluate the response. See 8E04 for further guidance on evaluating the contractor's response. If any unresolved violations remain, the CO will initiate conciliation.

8G CONCILIATION

Conciliation is a negotiation between a CO and a contractor to resolve findings of noncompliance. The CO will take a collaborative approach with contractors during the exchange

of information to promote a shared understanding of the issues and to promote resolution. The CO will work with the contractor to find innovative remedies, make good faith efforts to engage the contractor, and consistently apply transparency principles with all contractors. This section provides general information on conciliation while Section H provides COs specific information on CAs.

8G00 BACKGROUND

A compliance evaluation is complete when the CO issues a closure letter to the contractor. Of course, if the CO found violations, the contractor must correct the violations before a CO can issue a closure letter. COs use the conciliation process to resolve violations with the contractor.

8G01 GENERAL

After a CO issues an NOV, he or she will attempt to reach an acceptable resolution of the violation findings through voluntary conciliation efforts with the contractor. Conciliation discussions may involve various methods of communication, including the exchange of letters and emails, telephone conferences and in-person meetings. If these negotiations are successful, the CO will document the terms of the settlement in a formal CA. However, if, in the opinion of the CO, the contractor fails to agree to a reasonable settlement, fails to do so in a timely fashion or fails to negotiate in good faith, OFCCP may recommend the case for enforcement. In such circumstances, the CO must prepare a "recommendation to refer for enforcement" package and submit it to the regional office.

8H CONCILIATION AGREEMENTS

The CO uses CAs to resolve material or substantive violations of any of the three laws OFCCP enforces. Figure F-6, Standard Text for CA, provides sample CA language.[413] Figure F-7[414] provides sample language for notice documents that would be attached to a CA remedying compensation discrimination and Figure F-8[415] provides sample language for notice documents that would be attached to a CA for hiring or other discrimination based on a contractor's selection procedures.

8H00 WHEN TO USE A CA

The CO must use a CA whenever he or she properly issues an SCN or ASCN, or in the following circumstances:

1. If the CO finds in a compliance evaluation or complaint investigation that the contractor discriminated, either on an individual or systemic basis.

---

[413] See Figure F-6, Standard Text for Conciliation Agreement.
[414] See Figure F-7, Model Attachments for Compensation Conciliation Agreement.
[415] See Figure F-8, Model Conciliation Agreement Attachments for Hiring and Other Issues.

2. If a supply and service contractor did not submit an AAP as required by one or more of the three laws OFCCP enforces.

3. If a supply and service contractor's Itemized Listing data, provided based on a desk audit request, or the AAP is not acceptable.

4. If any contractor failed to demonstrate good faith effort, including situations where a supply and service contractor deviates substantially from its Executive Order 11246 AAP,[416] or materially violates its Section 503 and/or VEVRAA obligations.[417] It also includes situations where a federal construction contractor materially violates its Section 503 or VEVRAA obligations, or where a construction contractor fails to adequately document its implementation of its Executive Order 11246 affirmative action obligations and refuses to remedy those violations. [418]

8H01 CONTENTS OF A CA

All CAs use the format described in this section. It consists of a section captioned "Heading" followed by nine parts:

- Part I contains the Preliminary Statement
- Part II contains the General Terms and Conditions
- Part III contains the Violations
- Part IV contains the Financial Remedy
- Part V contains the Additional Individual Relief
- Part VI contains the Modifications of Employment Practices and Other Nonmonetary Relief
- Part VII contains the Notice Process
- Part VIII contains the OFCCP Monitoring Period
- Part IX contains the Signatures

CAs may be modified under certain circumstances and with certain prior approvals. OFCCP uses a standard template for CAs that is available to all COs on the agency's intranet.

---

[416] See 41 CFR 60-2.2(c).
[417] See 41 CFR 60-741.62 and 60-300.62.
[418] See FCCM Chapter 3– Construction Industry Compliance Program.

8H02 TERMINATION DATE

CAs shall have termination dates based on the minimum time necessary for contractors to correct all violations and for OFCCP to verify such correction.

The period provided in a CA should be sufficient to ensure that the contractor can accomplish all of the corrective actions. While full correction of all violations should be possible within one or two years under most CAs, some remedies may require more time. For example, if the CA requires make-whole relief for discrimination and that relief includes extending job offers as openings occur, the CA termination date could be extended until the contractor has made all the job offers and has paid all the back pay or front pay, or both.

8H03 SIGNATURE AUTHORITY

The following people must sign and date a CA:

- The contractor's top establishment official, however, if the establishment is a corporate or intermediate headquarters, the contractor's top official's designee may sign; and any additional contractor officials that the contractor wishes;
- The union local's top official and any additional union officials the union wishes, if the union is a party to the CA;
- The CO who conducted or led the compliance evaluation or complaint investigation;
- The Assistant District Director, if applicable;
- The District Director; and
- The Regional Director, unless the authority is otherwise delegated.

a. *Delegation of Regional Director's Authority.* Regional Directors have the authority to sign all CAs. However, a Regional Director may delegate signature authority to a District Director or other designee for CAs involving only affirmative action issues, individual discrimination issues, systemic discrimination claims in which the class does not exceed ten people and back pay does not exceed $25,000, or a combination of these issues.

b. *Notice of Review Completion.* After the required signatures are obtained on the CA, the CO will issue the contractor a "Notice of Review Completion – Major Violations Resolved in a Conciliation Agreement." If the CO issued an SCN, the CO should use sample form Letter L-40. If the CO did not issue an SCN, the CO should use Letter L-41.

8I POST CA ACTIONS

This section reviews the actions required after all the parties properly execute a CA. The CO and contractor have continuing obligations and duties, including maintaining all evidence of the

violations in the CA, and evaluating and reporting on progress. These and other responsibilities are discussed in the following subsections.

8I00 RETENTION OF EVIDENCE OF VIOLATIONS

COs must retain all evidence regarding violations resolved in a CA in the case file so that it can be readily retrieved and used if it is needed for enforcement proceedings. See FCCM 8H0l(g)(1), Contractor Retention of Data, for the contractor's obligation to retain records pertinent to violations and to reports submitted.

8I01 EVALUATION OF PROGRESS REPORTS

COs have different responsibilities if a required progress report is not received when compared to when a report is received from the contractor.

a. *Progress Report Not Received by a CO.* If a CO does not receive a required progress report when due, the CO will contact the contractor to determine if it is en route. If it is en route, the CO allows five calendar days for it to arrive. If the CO does not believe it is en route or if it does not arrive within five calendar days, the CO will issue a 15-Day Notice for violation of the CA.[419]

b. *Progress Reports Received by a CO.* When a CO receives a progress report, the CO must evaluate the contents of the report and determine whether the report is acceptable or whether the CO needs additional information. The CO normally evaluates a progress report within 15 calendar days of receiving it from the contractor. This evaluation must include an assessment of the report's completeness, as well as the analysis of the received items. If the CO needs additional information, the CO, in consultation with his or her supervisor, will determine how to best obtain the information (*e.g.,* by phone, mail, an on-site visit or review) and will so notify the contractor. The CO records the results of the evaluation and prepares a letter, using Letter L-39, notifying the contractor of the results.

c. *Questions Raised by a Progress Report Evaluation.* If the evaluation of a progress report raises questions about the contractor's implementation of the provisions of a CA, OFCCP may contact the contractor to obtain clarification of the report or schedule an on-site review, or both. If the on-site review is limited to the evaluation of the implementation of a CA issue, the CO will prepare a narrative report describing the results of the investigation and recommending whether the contractor is in violation of the CA. If the contractor is in violation of the CA, the CO may conduct a follow-up compliance evaluation, the scope of which depends on the nature of the violation. A full compliance review would only occur in rare circumstances. For any follow-up compliance evaluation, the CO will prepare a SCER (see Appendix A-1 and A-2, or A-6, as appropriate) with special emphasis on findings and recommendations on the CA implementation question. If the on-site review is proposed as the result of identifying possible new violations resulting from evaluating the implementation

[419] See FCCM 8J and Letter L-37 and L-37a.

of the CA, the CO should contact his or her supervisor and consult with RSOL and the national office, the Division of Program Operations, before engaging in the evaluation.

d. *Contractor Maintenance of Records.* In response to an inquiry or during an on-site review, the contractor must be prepared to furnish the underlying records or information on which the contractor based the report. If a CO requests copies of this data, the contractor may provide the copies, allow the CO to use its equipment to make the copies, loan the documents to the CO for off-site copying or make other appropriate arrangements with the CO. A failure to maintain or furnish this data is a violation of the CA.[420]

e. *Notification of Results.* If, after obtaining and evaluating contractor evidence relevant to fulfillment of CA commitments, a CO concludes that the contractor did not violate the provisions of the CA, the CO will notify the contractor in writing. This Notice can be included in the applicable standard close-out letter. If, however, OFCCP concludes that the contractor violated the CA, see FCCM 8I02, Violation of a Conciliation Agreement.

f. *Retention of Progress Reports and Evaluations.* The CO will retain progress reports and a copy of his or her corresponding analysis and evaluations in the case file. Copies of correspondence sent to the contractor acknowledging the report must be filed in the case file.

8I02 VIOLATION OF A CA

The violation of a CA may occur during the term of the agreement or after the expiration of the agreement.

a. *Violation During the Term of a CA.* If a CO determines that a contractor violated the provisions of a CA prior to the expiration of the CA, the procedures set out at 41 CFR 60-1.34, 41 CFR 60-300.63 and 41 CFR 60-741.63 require the CO to send the contractor a 15-Day Notice.[421] The Regional Director, or designee, signs the 15-Day Notice. Prior to issuing a 15-Day Notice, the CO must obtain appropriate approval.

b. *Repetition of Violation.* If the CO finds that the contractor repeats the same violation after the CA has expired, the CO should discuss the available options with RSOL.

- If the CO finds during the course of a new compliance evaluation (opened after the expiration of the two-year grace period following the expiration of a CA) that the contractor repeated any of the violations addressed in a prior CA, the CO should discuss the option of pursuing an enforcement action rather than a second CA.

- If the CO and RSOL decide to remedy these violations, along with any new violation, through a second CA, the CA will have a minimum term of four years or longer if it is necessary to ensure full implementation of remedy or in unusual circumstances. It will

[420] See FCCM 8J02 – Procedure Where Irreparable Injury Exists.
[421] See FCCM 8J; however, where irreparable injury is involved, see specific procedures in FCCM 8J02.

also have at least one compliance evaluation before the CA expires to ensure that the contractor is fulfilling or has fulfilled its terms.

8J THE 15-DAY NOTICE

This section reviews the proper use of a 15-Day Notice, the different procedures used when irreparable injury and no such injury exist, who signs and who receives the Notice, and how contractors respond to the Notice.

8J00 WHEN TO USE A 15-DAY NOTICE

When a CO finds that the contractor violated the CA, the CO should issue a 15-Day Notice to the contractor unless such a delay would result in irreparable injury to the employment rights of affected employees or applicants. In the case of irreparable harm, the response is as described in FCCM 8J02 below.

8J01 PROCEDURES WHERE NO IRREPARABLE INJURY EXISTS

The 15-Day Notice in this instance includes a cover letter and an enclosure citing the provisions of the CA the contractor violated and the bases for the findings.[422] The Notice will give the contractor 15 calendar days from receipt of the Notice to demonstrate, through a written presentation of facts and evidence, that the contractor is in compliance with the provisions cited in the CA.[423]

8J02 PROCEDURE WHERE IRREPARABLE INJURY EXISTS

Irreparable injury may occur when a violation of a CA is either in progress or expected, and the employment rights of affected employees or applicants will be irreparably harmed if the violation is not prevented or corrected during the 15-day response time normally allowed. Examples of such cases are when:

- Employees are experiencing severe harassment or retaliation; or
- The contractor has a CA commitment to offer a victim of discrimination a unique job (one unlikely to open again in the foreseeable future), such an opening occurs and the contractor is about to fill it with someone other than the victim.

When irreparable injury would result from the delay, the CO will not issue a 15-Day Notice. Instead, after obtaining RSOL clearance, the Regional Director shall attempt to notify the top establishment official by telephone that OFCCP intends to proceed directly to enforcement.[424]

After oral notice of breach of the CA and irreparable injury, the CO must immediately send a confirmation letter, cleared by RSOL, that cites the provisions of the CA the contractor violated,

---

[422] See Letter L-37 and L-37a.
[423] 41 CFR 60-1.34(a); 41 CFR 60-741.63; and 41 CFR 60-300.63.
[424] See 41 CFR 60-1.34(a), 41 CFR 60-741.63(a)(1), and 41 CFR 60-300.63(a)(1).

the bases for the findings, the reason for the irreparable injury allegation and OFCCP's intent to proceed directly to enforcement.

8J03 WHO RECEIVES THE 15-DAY NOTICE

The CO addresses a 15-Day Notice and the letter of confirmation referenced in FCCM 8J02 to the top official at the establishment under review, or the top official at the construction company in the economic area being reviewed. A copy is sent to the CEO of the corporation if the establishment or construction company is part of a larger corporation. If the contractor requested in writing that the CO provide a copy of the review or investigation correspondence to an outside representative such as an outside counsel or consultant, the CO will also send a copy to the designated representative. If the CO provides copies to a corporate CEO, other contractor official and/or a designated representative, the CO will include a "cc:" line on all copies indicating the people to whom the CO sent the Notice.

The CO always sends a 15-Day Notice via certified mail, return receipt requested. Email and facsimile are also permissible options.

8J04 SIGNATURE AUTHORITY

The Regional Director has signature authority for a 15-Day Notice and may not further delegate this authority. District Directors will send a proposed 15-Day Notice to the Regional Director, along with a copy of the CA that the contractor has violated and documentation pertaining to the CA provisions violated. Unless the contractor demonstrates that the CO's findings are incorrect, the CO refers the matter to RSOL for enforcement as described in FCCM 8K on Enforcement.

8J05 CONTRACTOR'S RESPONSE TO THE 15-DAY NOTICE

The contractor has 15 calendar days from the date it receives the 15-Day Notice to respond. If the contractor does not respond within the 15-day period, or reasonable extensions thereof, the CO refers the case for enforcement.

If the contractor does respond, OFCCP will evaluate whether the response shows that the CO erroneously issued the 15-Day Notice or otherwise explains the violations. If so, the CO will either rescind the 15-Day Notice or otherwise resolve the matter with the contractor. If not, the CO will formally refer the case to RSOL. RSOL, with the CO's assistance, will attempt to negotiate a consent decree that includes all appropriate remedies. If the contractor is unwilling to enter into a consent decree, RSOL will treat the case as a normal enforcement referral, as described in Section 8L on enforcement proceedings.

8K ENFORCEMENT RECOMMENDATIONS

Making an enforcement recommendation means seeking approval to refer the case to RSOL for either administrative or judicial enforcement. Before a case can move to enforcement, certain administrative and procedural actions must occur. The Regional Office working in collaboration with RSOL will consider whether a contractor has acted consistently and in good faith with an Opinion Letter, Directive, FAQ, Help Desk answer, or other OFCCP guidance in determining

whether to proceed with an enforcement recommendation in a given matter. This chapter reviews those steps and procedures.

8K00 WHEN TO MAKE OR SEEK APPROVAL OF AN ENFORCMENT RECOMMENDATION

COs should make an enforcement recommendation when the contractor, with or without an SCN:

- Refuses to submit required AAPs and support data under one or more of the following: Executive Order 11246, Section 503 or VEVRAA;
- Refuses to provide access to its premises for an on-site review;
- Refuses to provide access to necessary information; or
- Harasses or intimidates a CO or agent of OFCCP (*e.g.,* an OFCCP or SOL employee acting on behalf of the agency).

An enforcement recommendation should also be made in other situations, including when:

- An SCN is not resolved within 30 calendar days, or reasonable extensions thereof;
- A settlement negotiation fails to resolve violations specified in the NORI within 15 calendar days, or reasonable extensions thereof, in a complaint investigation;
- A contractor is not negotiating in good faith, and it is unlikely a CA will be reached;
- A 15-Day Notice of violation of the CA with no irreparable injury involved is not resolved within 15 calendar days, or reasonable extensions thereof; or
- A violation of a CA involves irreparable injury.

8K01 CONTENTS OF A COMPLIANCE EVALUATION FILE

a. General. A compliance evaluation case file that OFCCP submits for enforcement consists of a brief cover memorandum, a Transmittal Memorandum and the standard compliance evaluation case file. The case file must contain every document OFCCP collected and/or generated in the course of the evaluation, including all emails; statistical analyses, including spreadsheets properly labeled and dated; nonstatistical/anecdotal evidence; mitigation data; interview statements and detailed descriptions of the employment processes or practices at issue. The case file must include a table of contents or index that identifies all of the contents and their location within the file, tabs and labels. The case file OFCCP submits to RSOL for enforcement should be an exact copy of the original case file and contain all of the

documents in the original case file.[425] The file is sent to the RO for transmittal to the RSOL. If needed, the RO can create and maintain a copy of the file at this point. The original file will remain in the field office responsible for conducting the compliance evaluation.

b. *Cover Memorandum*. The cover memorandum is typically one page. It contains a brief statement of all the violations at issue, and indicates which violation(s) were at impasse when the conciliation process terminated (*e.g.,* jurisdiction, denial of access, whether there was a violation, the amount of back pay).

c. *Transmittal Memorandum.* Appendix A-13 describes the contents of the Transmittal Memorandum. The Transmittal Memorandum must be a stand-alone document that contains all of the information supporting why RSOL and DPO should ultimately approve the enforcement recommendation. It should include any strengths or weaknesses the CO uncovered during the course of the investigation or review, citations to relevant supporting documentation in the case file, contractor's response to the alleged violations, OFCCP's assessment of those responses and a history of the conciliation efforts, including any offers the CO and contractor exchanged. It should not be a Memorandum that consists solely of conclusory statements or summary information, but instead be a report explaining why RSOL should pursue the case for enforcement. Every fact in the Transmittal Memorandum must contain a reference to the location of the back-up information or documents in the case file that verify the fact.

8K02 CONTENTS IN A COMPLAINT INVESTIGATION

a. *General.* A complaint investigation case file that OFCCP submits for enforcement consists of a cover memorandum and the standard complaint investigation case file. The case file must include a table of contents or index identifying all of the contents and their location within the file, tabs and labels. RSOLs are provided an exact copy of the original case file.

b. *Cover Memorandum.* The cover memorandum is typically one page. It must request enforcement, briefly state the law under which the victim filed the complaint, state the allegations and basis for the complaint, and state the violation(s) and the results of conciliation efforts. This includes the issues at impasse when conciliation terminated.

c. *Transmittal Memorandum.* The Transmittal Memorandum for a complaint investigation is similar in content to the Transmittal Memorandum description above.

8K03 WHO RECEIVES THE ENFORCEMENT RECOMMENDATIONS

The regional office submits the enforcement recommendation and case file simultaneously to RSOL and DPO. It must contain all of the documents in the original case file, including applications. The CO sends a copy of the cover memorandum and the transmittal memorandum to DPO, as well as the completed SCER (compliance evaluations) or Investigative Report (complaint investigations). Upon receipt, DPO is responsible for forwarding a copy of the

[425] In addition, a copy of the enforcement memo and list of supporting documents and tabs will be sent to DPO when the file is referred to RSOL.

enforcement recommendation and supporting documents to the national Office of the Solicitor of Labor (NSOL); specifically, the Associate Solicitor, Civil Rights and Labor-Management Division, Office of the Solicitor, U.S. Department of Labor, Room N-2474, 200 Constitution Ave., N.W., Washington, D.C. 20210.

If DPO uncovers deficiencies during its preliminary review of an enforcement recommendation, it rejects the enforcement referral and returns it to the appropriate regional office for further action or to correct the deficiencies, or both. Examples of deficiencies that may result in rejection include lack of jurisdiction, no evidence of consultation with RSOL prior to referral and incorrect citation of a violation. DPO concurrently informs NSOL to notify the appropriate RSOL of this action. Furthermore, should RSOL or NSOL, or both, have any concerns regarding the merits of the enforcement referral, the appropriate SOL office will notify the regional office to discuss the issues associated with the referral. If SOL rejects an enforcement referral, it must explain in writing the reasons for the rejection.

8K04 SIGNATURE AUTHORITY

The applicable Regional Director has signature authority for an enforcement recommendation and cannot delegate this authority further. The originating district office will prepare the cover memorandum and transmittal memorandum, as appropriate, for the Regional Director's signature.

8L PRE AND POST REFERRAL ISSUES RESULTING IN ENFORCEMENT PROCEEDINGS

This section reviews pre and post-referrals to the RSOL as ways of stopping an enforcement action.

8L00 PRE-REFERRAL TO RSOL

Efforts to reach a voluntary resolution of the noncompliance should continue up until the time the CO refers the matter to RSOL. Settlement negotiations, however, may not unduly delay an enforcement recommendation. For example, an enforcement recommendation is appropriate as soon as it becomes clear that the contractor is not negotiating in good faith.

8L01 POST-REFERRAL TO RSOL

Once a CO refers a matter to RSOL for enforcement, settlement negotiations between the contractor and the CO must end. The RSOL will conduct all further negotiations with input from the CO and other agency officials. When, as a result of negotiations between RSOL and the contractor, they reach an agreement, RSOL may incorporate the agreed-upon remedies in a consent decree and file the consent decree simultaneously with an administrative complaint if it was not already done. An Administrative Law Judge (ALJ) must approve the terms of the consent decree. The ALJ's Order approving the consent decree is the final administrative order in the case. The contractor will send progress reports that the consent decree requires to the

appropriate field office working with RSOL to evaluate the contractor's compliance with the consent decree.

8M TYPES OF ENFORCEMENT PROCEEDINGS

Once a CO refers a case to RSOL for enforcement, RSOL determines whether the case is litigation-worthy and, in the process of doing so, may seek additional information on the case from the CO. The RSOL also makes a recommendation to the Director of OFCCP on whether an enforcement proceeding should be administrative or judicial.

8M00 ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

RSOL normally initiates administrative enforcement proceedings unless circumstances warrant referral to the U.S. Department of Justice (DOJ) for judicial proceedings. The RSOL's filing of an Administrative Complaint with the Office of Administrative Law Judges (ALJ) initiates administrative enforcement proceedings. An ALJ conducts an administrative hearing on the Complaint under the procedures set forth in 41 CFR Part 60-30. Section 503 and VEVRAA use the same administrative hearing procedures as Executive Order 11246 pursuant to 41 CFR 60-741.65 and 41 and CFR 60-300.65, respectively.

8M01 JUDICIAL ENFORCEMENT PROCEEDINGS

The Solicitor for the U.S. Department of Labor may refer a case to the DOJ for judicial enforcement proceedings when circumstances so warrant and the Director of OFCCP concurs. For example, RSOL may need an injunction against a sole source contractor since cancellation of federal contracts may not be practical or the Director of OFCCP may request that the Solicitor for the U.S. Department of Labor make a referral to DOJ of a case for judicial enforcement.

The Solicitor for the U.S. Department of Labor may make referrals to the DOJ for judicial enforcement at any stage in the enforcement process without proceeding through conciliation efforts.[426] DOJ initiates judicial enforcement proceedings when the Attorney General files a complaint on behalf of the DOL in Federal District Court. As with any other federal court case, the losing party may appeal to the Circuit Court of Appeals, and the losing party in the court of appeals may request review by filing a "writ of certiorari" with the U.S. Supreme Court.

[426] See 41 CFR 60-1.26(c)(1).

KEY WORDS AND PHRASES

Accommodation

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

Active Duty Wartime or Campaign Badge Veteran

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

Administering Agency

Any department, agency or establishment in the executive branch of the government, including any wholly owned government corporation, which administers a program involving federally assisted construction contracts. See 41 CFR 60-1.3.

Administrative Complaint

A document filed by the Office of the Solicitor on behalf of OFCCP with the Office of Administrative Law Judges that begins an administrative enforcement proceeding under Executive Order 11246, Section 503 and/or VEVRAA.

Administrative Law Judge (ALJ)

The presiding official at an administrative enforcement proceeding under Executive Order 11246, Section 503 and/or VEVRAA. See 41 CFR Part 60-30, 41 CFR 60-1.26(b), 60-300.65(b) and 60-741.65(b).

Administrative Procedure Act

A law enacted by Congress in 1946 that establishes an administrative process that OFCCP and other federal government agencies must follow. It includes standards for rulemaking, for certain formal adjudications and for court reviews of certain administrative actions. See 5 U.S.C. 500 *et seq*.

Adverse Impact

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

Though the terms "adverse impact" and "disparate impact" are sometimes used interchangeably, the Uniform Guidelines on Employee Selection Procedures (UGESP)

outlined at 41 CFR 60-3.16B use only the term "adverse impact" and define it as a substantially different rate of selection in hiring, promotion, transferring, training or other employment decision which works to the disadvantage of the members of a race, sex or ethnic group identified in 41 CFR 60-3.4. See "Disparate Impact."

Affected Class

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

Affirmative Action

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

Affirmative Action Program (AAP)

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

American Indian/Alaskan Native (not Hispanic or Latino)

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

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

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

Amended Show Cause Notice (ASCN)

A letter from OFCCP issued to a contractor to modify a Show Cause Notice (SCN) that OFCCP has previously issued to the contractor as part of the same investigation or compliance evaluation. An ASCN is used when OFCCP later finds either additional unresolved violations during the investigation or compliance evaluation, or finds that some but not all violations were initially cited in the SCN in error. The ASCN identifies all the unresolved or current violations.

Anecdotal Evidence

Nonstatistical evidence of discrimination that can help bring "the cold numbers convincingly to life," *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 339 (1977), by illustrating actions or behavior that support a statistical indicator or allegation of discrimination. The type of facts and information that may constitute anecdotal evidence is varied and broad. For example, it may include first-hand accounts of employees' personal experiences with discrimination. It may also include inconsistent use of rejection reasons by the contractor to the detriment of applicants from particular groups, or evidence of rejected applicants' excellent qualifications, as compared to mediocre qualifications of hired applicants. Anecdotal evidence is often contrasted to statistical evidence. See also "Nonstatistical Evidence" and "Statistical Evidence."

Applicant

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

Applicant Flow Data (Log)

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

Apprenticeship (Contractor or Industry Specific)

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

Armed Forces Service Medal Veteran

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

Asian (not Hispanic or Latino)

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

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 to determine whether barriers to equal employment opportunity may exist within particular job groups.

Back Pay

The portion of a make-whole remedy that represents the lost earnings caused by a contractor's discriminatory employment action, practice or procedure. Lost earnings include, but are not limited to, compensation or salary, overtime, premium pay and shift differentials, incentive pay, raises, bonuses, lost sales commissions, cost-of-living increases, tips, medical and life insurance, fringe benefits, pensions, stock options and awards.

Basic Qualifications (Internet Applicant)

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

1. "Basic qualifications" mean qualifications:

(a) That the contractor advertises (*e.g.,* posts on its website in a description of the job and the qualifications involved) to potential applicants that they must possess to be considered for the position; or

(b) For which the contractor established criteria in advance by making and maintaining a record of such qualifications for the position before considering any

expression of interest for that particular position if the contractor does not advertise for the position but, instead uses an alternative device to find individuals for consideration (*e.g.,* through an external resume database); and

2. That meets all of the following three conditions:

(a) The qualification must be noncomparative features of a job seeker. For example, three years of experience in a particular position is a noncomparative qualification; a qualification that an individual has one of the top five years of experience among a pool of job seekers is a comparative qualification.

(b) The qualifications must be objective; they do not depend on the contractor's subjective judgment. A qualification is objective if a third party, with the contractor's technical knowledge, would be able to evaluate whether the job seeker possesses the qualification without more information about the contractor's judgment. For example, "a bachelor's degree in accounting" is objective while "a technical degree from a good school" is not.

(c) The qualifications must be relevant to the performance of the particular position and enable the contractor to accomplish business-related goals.

Black or African American (Not Hispanic or Latino)

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

Bona Fide Occupational Qualification (BFOQ)

A defense to the general prohibition of discrimination in employment on the basis of sex, religion or national origin that permits an employer to limit a particular job to members of one sex, religion or national origin group. Race cannot be used as a BFOQ.

The BFOQ defense is very narrow but has been successfully used in the sex discrimination context when privacy concerns are implicated. For example, a women's prison may be able to demonstrate that being female is a BFOQ for the hiring of a guard to perform body searches of female prisoners.

Bona Fide Seniority, Merit or Incentive System

An employer may lawfully compensate employees differently on the basis of a bona fide seniority, merit or incentive system. A seniority system rewards employees according to the length of their employment. A merit system rewards employees for exceptional job performance. An incentive system provides compensation on the basis of the quality or quantity of production. To be a bona fide system, it must not have been adopted with discriminatory intent, it must be based on predetermined criteria, it must have been communicated to employees, and it must have been applied consistently and even-handedly to all similarly situated employees.

Business Necessity

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

Caregiver Discrimination

Being a working parent or another type of caregiver is not a protected characteristic under Title VII, the ADA or the laws enforced by OFCCP. However, there are circumstances in which discrimination against caregivers may constitute unlawful disparate treatment or disparate impact based on a protected characteristic such as sex or race. Discrimination against a caregiver due to his or her association with an individual with a disability may be a violation of Section 503.

Case Management System (CMS)

An OFCCP system used to track and monitor compliance evaluations and complaint investigations of establishments and functional units. Field offices have specific responsibilities to add information into this automated system. Specific instructions are found in the online CMS Manual.

Circumstantial Evidence

Also referred to as inferential or indirect evidence. Comparative or other evidence that gives rise to an inference of discrimination. Circumstantial evidence typically involves an extra (inferential) step to conclude whether discrimination has occurred. It may include statistical evidence, suspicious or ambiguous timing, statements or behavior, or any other evidence that individually or collectively support an inference of discrimination. Compare "Direct Evidence of Discrimination."

Class Complaint

A complaint brought on behalf of multiple applicants or employees who have a common claim against a federal contractor.

Coercion

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

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 in writing by, or on behalf of, one or more employees (including former employees) or applicants that alleges the individual or individuals have been victims of discrimination or retaliation that is prohibited by the laws enforced by OFCCP, (*i.e.*, Executive Order 11246, Section 503 or VEVRAA), or

that the contractor is violating 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, off-site review of records, compliance check or focused review. See 41 CFR 60-1.20(a), 60-300.60(a) and 60-741.60(a).

Compliance Officer (CO)

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

Compliance Review

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

Conciliation

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

Conciliation Agreement (CA)

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

Construction Contract

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

Construction Site

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

Construction Work

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

Constructive Discharge

The involuntary resignation of an employee as a result of a contractor's making the employee's working conditions so intolerable that a reasonable person would have felt compelled to resign. OFCCP will find that an employee was constructively discharged in violation of Executive Order 11246, Section 503 or VEVRAA when it finds that: 1) a reasonable person in the employee's position would have found the working conditions so intolerable as to compel resignation; 2) the contractor's conduct created the intolerable conditions and was motivated by retaliation; or based on race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran; or because the individual disclosed, discussed or inquired about compensation; and 3) the employee's involuntary resignation resulted from the intolerable working conditions.

Continuing Violation

A continuing violation may be found to exist when it is determined that multiple related actions constitute a single act of discrimination, *e.g.,* a hostile work environment, pay discrimination, or a discriminatory policy or system. A continuing violation exists where: 1) at least one of the actions occurred within the liability period and the other actions are related or so similar in nature as to show a pattern or practice of employment discrimination, or 2) the contractor maintains a discriminatory policy or practice into the liability period. Continuing violations may be, but do not have to be, systemic.

Contract

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

Contract Cancellation

The termination of a federal contract before its expiration date by order of the appropriate government authorities. Contract cancellation is one of the sanctions authorized, in appropriate cases, for violation of Executive Order 11246, Section 503 or VEVRAA. Compare with "Debarment" and "Contract Suspension."

Contract Suspension

The temporary interruption of a federal contract by order of the appropriate government authorities. Contract suspension is one of the sanctions authorized, in appropriate cases, for violation of Executive Order 11246, Section 503 or VEVRAA. Compare with "Contract Cancellation" and "Debarment."

Contracting Agency

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

Contractor

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

Corrective Remedy

Corrective remedies, also called "injunctive relief," stop the violation and protect against its recurrence. Corrective remedies vary based on the facts of each case and may include, for example, stopping the use of a discriminatory policy or practice, substituting a nondiscriminatory policy or practice, and establishing a monitoring system to ensure the nondiscriminatory policy or practice is properly implemented. Corrective remedies will, typically, be part of any complete remedy.

Covered Area

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

Criteria Identification (also referred to as Criteria Verification)

The process of obtaining the contractor's stated criteria for a selection decision(s) (usually through interviewing selection officials and examining any relevant contractor documents) and then determining whether the stated criteria account for or sufficiently explain the actual selection decisions.

Davis-Bacon Act

The Davis-Bacon Act is enforced by the Wage and Hour Division of the U.S. Department of Labor. As amended, the Act requires that each contract over $2,000 to which the U.S. or the District of Columbia is a party for the construction, alteration or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. Under the provisions of the Act, contractors and their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. The Davis-Bacon Act directs the Secretary of Labor to determine such local prevailing wage rates.

Debarment

A declaration that a contractor is ineligible for the award of future contracts. Debarment is one of the sanctions authorized, in appropriate cases, for violation of Executive Order 11246, Section 503 or VEVRAA. Compare with "Contract Cancellation" and "Contract Suspension."

Deficiency

Any failure to fulfill a requirement of the Executive Order 11246, Section 503 or VEVRAA, including any failure to comply with the implementing rules, regulations and orders of OFCCP. See "Violation."

Direct Evidence of Discrimination

Proof of a discriminatory reason for an employment decision that does not use inference or presumption. Direct evidence of discrimination is not required for OFCCP to find that discrimination occurred.

Director

The Director of the Office of Federal Contract Compliance Programs (OFCCP). The head of OFCCP was formerly referred to as the Deputy Assistant Secretary for Federal Contract Compliance; this previous designation still appears in some OFCCP regulations.

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-Related Question or Inquiry

It is a violation of Section 503 for a contractor to ask disability-related questions of an applicant at the pre-offer stage of the employment process, and such questions may only be asked of employees if they are job-related and consistent with business necessity. See 41 CFR 60-741.23. A disability-related question or inquiry is one that is likely to elicit information about the existence, nature or extent of a disability. This includes directly asking whether an applicant has a disability, as well as asking questions that are closely related to disability, *e.g.,* "Do you have a disability?" "Are you able to stand and walk?" and "Will you need a reasonable accommodation to perform this job?" However, an application may ask applicants, pre-offer, to inform the contractor if an accommodation is needed for the *application process*. As part of the contractor's affirmative action obligations, the contractor shall also invite applicants, pre- and post-offer, and employees to inform the contractor whether they believe that they are individuals with disabilities as defined in 41 CFR 60-741.2(g)(1)(i) or (ii).

Disabled Veteran

"Disabled Veteran" means:

1) A veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or

2) A person who was discharged or released from active duty because of a service-connected disability.

See 41 CFR 60-300.2(i).

Disadvantaged Business Enterprise

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

Discrimination

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

Disparate Impact

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

Disparate Treatment

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

Economic Area

Geographical areas, defined along county lines by the Bureau of Economic Analysis of the U.S. Department of Commerce, that are centers of commerce and generally cover areas that include the places of work and residence for most workers. EA is an umbrella term for the Standard Metropolitan Statistical Areas (SMSA) and non-SMSAs. See "Covered Area."

EEO Policy

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

EEO-1 Report

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

EEO-3 Report

The *Local Union Report EEO-3*. A biennial survey conducted in the even-numbered years that collects labor force data from Referral Unions subject to Title VII of the Civil Rights Act of 1964, as amended, with 100 or more employees within 50 U.S. states and District of Columbia. The report collects information on employment totals and employees' job category, and sex and race/ethnic groups as of December 31 of the preceding year of the survey year.

EEO-4 Report

The *State and Local Government Report EEO-4*. A biennial report filed in the odd-numbered years that collects information from State and local governments. All States and all other political jurisdictions with 100 or more employees must file this report.

EEO-5 Report

The *Elementary-Secondary Staff Information Report EEO-5*. A biennial report conducted in the even-numbered years that collects information from all public elementary and secondary school districts with 100 or more employees in the U.S. The EEO-5 Report is a joint requirement of the EEOC and the Office for Civil Rights of the U.S. Department of Education.

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

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

- The contractor's right to control when, where and how the individual performs the job;

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

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

Employment Agency

Any person or entity that, with or without compensation, regularly works to procure employees for a contractor or to procure for individuals opportunities to work for a contractor. It also includes an agent of such a person or entity.

Employment Offer

A contractor's offer of employment to an individual, usually for a specific job.

Employer Identification Number (EIN)

A nine-digit number assigned to a company by the Internal Revenue Service for tax and other identification purposes.

Employment Service Delivery System (ESDS)

The Wagner-Peyser Act of 1933 established a nationwide system of public employment offices known as the "Employment Service." As amended in 1998, the Act makes the Employment Service part of the One-Stop delivery system. The One-Stop delivery system, also known as American Job Centers, provides universal access to an integrated array of labor exchange services so that workers, job seekers and businesses can find the services they need in one stop and frequently under one roof in easy-to-find locations. The U.S. Department of Labor's Employment and Training Administration oversees Wagner-Peyser.

Enforcement

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

Equal Employment Opportunity Commission (EEOC)

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

Equal Opportunity Clause

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

Essential Functions (Section 503 or VEVRAA)

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

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

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

- The contractor's judgment as to which functions are essential;
- Written job descriptions prepared before advertising or interviewing applicants for the job;
- The amount of time spent on the job performing the function;
- The consequences of not requiring the incumbent to perform the function;

- The terms of a collective bargaining agreement;
- The work experience of past incumbents in the job; and/or
- The current work experience of incumbents in similar jobs.

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

Essential Job Functions (pay secrecy)

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

A job function may be considered essential if:

(i) The access to compensation information is necessary to perform that function or another routinely assigned business task; or

(ii) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

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

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. The Executive Order also and requires that these contractors take affirmative action to ensure equal employment opportunity.

Executive Order 13496

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

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

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

Exempt Contract

Any government contract or subcontract that is not subject to some or all obligations under one or more of the laws enforced by OFCCP. Most contracts meeting specified dollar thresholds are covered, but there are a few exemptions and waiver provisions. See 41 CFR 60-1.3, 60-1.5 (coverage and exemptions under Executive Order 11246); 41 CFR 60-300.4 (coverage and waivers under VEVRAA); 41 CFR 60-741.4 (coverage and waivers under Section 503).

Exempt Jobs

Jobs that are exempt from the minimum wage and overtime requirements of the Fair Labor Standards Act. The exemptions cover executive, administrative, professional, computer and outside sales employees. To qualify for an exemption, employees generally must meet certain tests regarding their job duties and be paid a prescribed minimum salary.

Facially Neutral

An employment practice or policy is facially neutral if it does not reference a protected characteristic such as sex or race. Even if a contractor's policy or practice (*e.g.,* excluding applicants from employment based on certain criminal conduct or lack of a high school degree) is facially neutral, if it disproportionately impacts individuals on a prohibited basis, it violates the law unless it is shown to be job-related and consistent with business necessity (disparate impact discrimination).

Family and Medical Leave Act (FMLA)

The FMLA provides eligible employees with up to 12 workweeks of unpaid, job-protected leave a year, and requires continuation of group health insurance coverage

under the same terms and conditions as if the employee had not taken leave. The FMLA is enforced by the U.S. Department of Labor's Wage and Hour Division.

Favored Group

The group with the highest selection rate when calculating the impact ratio or level of statistical disparity or both. When calculating the impact ratio of unfavorable actions such as layoffs or terminations, the favored group is the group with the lowest selection rate.

Federal Contractor Selection System (FCSS)

OFCCP's FCSS is a neutral selection system that identifies federal contractor establishments that may be selected for compliance evaluations. The FCSS process uses multiple information sources such as federal acquisition and procurement databases, EEO-1 employer information reports, Dun & Bradstreet data, Census data and statistical thresholds such as industry type and employee counts of federal contractor establishments.

Federally Assisted Construction Contract

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

Field Office

Any OFCCP office outside of the national office and its divisions that is responsible for the tasks or activities described in the Federal Contractor Compliance Manual (FCCM or Manual).

Fifteen-Day Notice

See "Notice of Violation of a Conciliation Agreement."

First-Tier Subcontractor

A subcontractor holding a subcontract with a prime contractor.

Focused Review

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

Formal Training

A structured program designed to develop an individual's job-related skills and abilities. Typically, classroom training, as well as on-the-job training, falls into this category.

Formula Relief

A method used in systemic discrimination cases for calculating a total amount of back pay for an affected class of discrimination victims that is then divided (pro rata or otherwise) among all members of that class. *Compare with* "Individual Relief."

Fringe Benefits

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

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

Front Pay

Compensation for estimated future economic loss; generally, calculated based on the difference between the discrimination victim's current pay and the pay associated with his or her rightful place had discrimination not occurred. Front pay runs from the time of the settlement (*e.g.,* the date of the conciliation agreement), or final administrative or court order), to a certain time in the future (usually when the victim attains his or her rightful place) that is set by the settlement or final order.

Functional Affirmative Action Program (FAAP)

An AAP based on a clearly distinct functional or business unit within a corporate structure as opposed to an AAP based solely on an establishment's physical location. A contractor wishing to develop a FAAP must first reach an agreement with OFCCP allowing it to do so. See *Functional Affirmative Action Programs (FAAP),* Dir 2013-01, Revision 2(06/20/2019).

Gender-Based Discrimination

See "Sex Discrimination."

Gender Identity

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

Geographical Area

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

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

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

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

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

Goal for Qualified Individuals with Disabilities (Utilization Goal)

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

employees have the option of using their entire workforce instead of job groups or trades. See 41 CFR 60-741.45.

Good Faith Efforts

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

Government Contract (or Federal Contract)

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

Government contracts do not include:

1) Agreements in which the parties stand in the relationship of employer and employee; and

2) Federally assisted construction contracts.

Harassment

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

Hispanic or Latino

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

Impact Ratio Analysis (IRA)

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

Individual Relief

The assessment of make-whole relief for identified victim(s) of discrimination on an individualized basis. This method is generally used to calculate back pay and other make-whole relief, such as reinstatement and rightful seniority, in the individual or small group discrimination cases where the victims of discrimination, and the losses they incurred, can be determined with specificity. Compare with "Formula Relief."

Individual with a Disability

A person with a disability. See "Disability."

Injunctive Relief

See "Corrective Remedy."

Internet Applicant

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

- The individual submits an expression of interest in employment through the internet or related electronic data technologies;
- The contractor considers the individual for employment in a particular position;
- The individual's expression of interest indicates the individual possesses the basic qualifications for the position; and,
- The individual does not remove him or herself from further consideration or otherwise indicates that 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 race, sex, ethnicity, disability, and/or protected veteran status. All information obtained in response to invitations to self-identify as an individual with a disability or protected veteran must be kept in a confidential data analysis file under 41 CFR 60-300.42 and 60-741.42.

Job Area

Any sub-unit of a workforce sector (*e.g.,* department, job group, job title, line of progression).

Job Area Acceptance Range (JAAR)

An analytical tool used to analyze the distribution of employees in a workforce by comparing the actual percentage of minorities and women in a job area to their percentage in the relevant segment of the contractor's workforce.

Job Categories

The 10 designated categories of the EEO-1 report:

- Officials and managers (divided into executive/senior level and mid/first level),
- Professionals,
- Technicians,
- Sales workers,
- Office and clerical,
- Craft workers (skilled),
- Operatives (semi-skilled),
- Laborers (unskilled), and
- Service workers.

Job Description

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

Job Group

One or more group(s) 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.

Journey Worker

One who has completed an apprenticeship program or otherwise possesses the full skills and licenses of workers in his or her trade. Historically referred to as "journeyman."

Labor Area

The Geographic area used in calculating availability. The area may vary from local to nationwide.

Layoff

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

Let or Let a Contract

The awarding of a contract to the prime contractor.

Line of Progression

A series of related jobs in a promotional sequence, generally starting with lower-paying jobs with less responsibility and progressing to higher-paying jobs with greater responsibility. Often, the lower-level jobs provide required training for movement to the higher-level jobs.

Linkage

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

Local Veterans' Employment Representative

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

Major Life Activities

A key term used in the definition of "disability." Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. A major life activity also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions. See 41 CFR 60-741.2(m).

Make-Whole Relief

Remedy for discrimination that restores the victim of discrimination to his or her rightful place, both economically and in terms of employment status, and benefits and privileges that he or she would have had had the discrimination not taken place. Common elements

of make-whole relief include, but are not limited to, as appropriate to the facts of the case, instatement, reinstatement, back pay with interest and retroactive seniority.

Mandatory Job Listing (MJL)

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

Maternity Leave

A woman's childbirth-related absence from work that does not directly depend on her medical condition. The term includes leave for nonmedical related care and nurturing following the birth of a child.

Mega Construction Project

A large construction project spanning more than one year with a value of $25 million or more.

Minorities

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

Minority-Owned Business Enterprise (MBE)

As defined by the Small Business Administration, a minority-owned business enterprise is a for-profit business, regardless of size, physically located in the U.S. or its trust territories, which is owned, operated and controlled by minority group members. Minority ownership must be at least 51% to qualify, whether the business is publicly or privately held. If publicly held, at least 51% of its stock must be held by minority group members.

MOU (Memorandum of Understanding)

A written agreement between two or more entities, which often serves to memorialize the intent and purpose of the parties' working relationship.

National Origin

National origin includes:

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

Native Hawaiian/Other Pacific Islander

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

New Hire

A worker added to an establishment's payroll for the first time. Compare with "Rehire."

Noncompliance

A contractor's failure to adhere to the conditions set out in the contract's equal opportunity clauses or the regulations implementing those clauses (41 CFR Chapter 60), or failure to correct violations.

Nonstatistical Evidence

Nonstatistical evidence may include testimony about biased statements, remarks, attitudes, or acts based upon membership in a protected class; differential treatment through review of comparators, cohorts, or summary data reflecting differential selections, compensation and/or qualifications; testimony about individuals denied or given misleading or contradictory information about employment or compensation practices; testimony about the extent of discretion or subjectivity involved in making employment decisions; or other anecdotal or supporting evidence. See also "Anecdotal Evidence" and "Statistical Evidence."

Nonfavored Group

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

Normal Business Hours

For purposes of access to a contractor's premises, the hours during which employees to be interviewed are at work, regardless of the time of day or night. Also used to indicate the hours during which documents, such as AAPs, are available for inspection by employees and applicants for employment.

North American Industry Classification System (NAICS)

The standardized system used by federal agencies in classifying businesses for the collection, analysis and publication of statistical data related to the business economy of the U.S. NAICS was developed under the auspices of the Office of Management and Budget, and adopted in 1997 to replace the Standard Industrial Classification (SIC) system.

Notice of Results of Investigation (NORI)

A letter from OFCCP notifying the contractor of the results of a complaint investigation, including whether the agency found any violations of Executive Order 11246, Section 503 or VEVRAA. If violations were found, the NORI details those violations and invites the contractor to join the agency in resolving the complaint through conciliation.

Notice of Violation (NOV)

A letter from OFCCP notifying the contractor that the agency has found violations of Executive Order 11246, Section 503 and/or VEVRAA during a compliance evaluation, identifying the remedies that are required to resolve those violations, and inviting the contractor to engage in conciliation to resolve them.

Notice of Violation of a Conciliation Agreement (15-Day Notice)

A letter from OFCCP informing the contractor that the agency believes the contractor has violated the terms of a Conciliation Agreement and that enforcement proceedings may be initiated unless the contractor demonstrates within 15 calendar days from its receipt of the letter that it has not violated its commitments under the agreement.

O*NET (Occupational Information Network)

An electronic database maintained by the U.S. Department of Labor's Employment and Training Administration that classifies occupations in the U.S. economy based on their duties and commonly required qualifications.

Objective Criterion

A selection criterion is objective if it is fixed and measurable (*e.g.,* the requirement of a high school degree rather than a "good education"). The central characteristic of an objective criterion is that it can be independently verified, *i.e.*, different people measuring objective criteria will reach the same results. Compare with "Subjective Criterion."

Off-Site Review of Records

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

On-The-Job Training (OJT)

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

Organizational Unit

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

Pacific Islander (not Hispanic or Latino)

See "Native Hawaiian/Other Pacific Islander."

Parental Leave

Absence from work by a parent to care for a child.

Pattern or Practice Discrimination

Discrimination resulting from a practice or acts that are repeated, routine or of a generalized nature, for example, a practice of not interviewing male applicants for positions that involve working in small spaces. Methods of proving such discrimination vary from case to case, but often include, at least in part, statistical evidence.

Perfection (of a Complaint)

Perfection is the initial process used to determine whether OFCCP has jurisdiction over a complaint filed with the agency and should retain it for investigation. Perfection includes assessing whether a complaint is complete, whether it was filed within established timeframes and whether the allegation(s) fall within the agency's jurisdiction (meaning that the company is a federal contractor or subcontractor and that the allegations assert a violation under the laws enforced by OFCCP). Once a complaint is perfected, it is assigned to a CO for investigation.

Person

Any natural person, corporation, partnership, unincorporated association, state or local government; and any agency, instrumentality or subdivision of such a government. 41 CFR 60-1.3. The term also includes joint ventures under the regulations implementing VEVRAA (41 CFR 60-300.2(n)(5)) and Section 503 (41 CFR 60-741.2(k)(5)).

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

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

Personal Representative

A complainant may choose to have a personal representative file a complaint on their behalf or act on their behalf during the complaint process. A personal representative may, but is not required to, be an attorney. A family member, friend, co-worker, union steward or other advocates may also be a personal representative.

Personnel Practices

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

Physical and Mental Job Qualifications

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

Physical or Mental Impairment

Physical or mental impairment means:

(a) Any physiological disorder, condition, cosmetic disfigurement or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin and endocrine; or

(b) Any mental or psychological disorder, such as an intellectual disability (formerly termed mental retardation), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

See 41 CFR 60-741.2(o).

Placement

In this Manual, placement is often used in the context of the selection or assignment of individuals for a particular job. Also see "Goals for Minorities and Women, Supply and Service Contractors (Placement Goals.)"

Predetermination Notice (PDN)

A letter in which OFCCP notifies the contractor of its preliminary finding that the contractor has engaged in discrimination. The PDN states the basis for the preliminary findings and offers the contractor the opportunity to respond.

Pregnancy Accommodation

See "Reasonable Accommodation (Pregnancy)."

Pregnancy Discrimination

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

Pretext

Professed legitimate reason or motive articulated by a contractor as a cover for a discriminatory reason or motive.

Prima Facie Case

A legal term that refers to a party's production of enough evidence to meet its burden of proof or raise a presumption unless disproved or rebutted.

Problem Areas

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

Progression Line Charts

Written listings of a contractor's lines of progression. See "Line of Progression."

Prohibited Basis or Prohibited Factor

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

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

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

Promotable or Transferable

In the context of estimating internal availability, those employees who are currently employed in a job group or groups that serve, or could serve, as a source from which selections are, or could be, made for other job groups.

Promotion

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

Protected Group or Category

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

Protected Veteran

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

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

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

Qualified Individual (with a Disability)

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

Race or Color

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

Reasonable Accommodation (Disability/Disabled Veteran))

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

The term reasonable accommodation means modifications or adjustments:

- To a job application process that enables a qualified applicant with a disability to be considered for the position the applicant desires;
- To the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

- That enables the contractor's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by the contractor's other similarly situated employees without disabilities.

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

Reasonable Accommodation (Pregnancy)

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

Reasonable Accommodation (Religion)

See "Religious Accommodation."

Reasonable Recruitment Area

The geographic area from which the contractor usually seeks, or reasonably could seek, workers to fill jobs within a particular job group.

Recall

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

Recently Separated Veteran

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

Recruitment Source

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

"Regarded As" Having an Impairment

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

disability or a record of a disability) is not entitled to receive reasonable accommodation. See 41 CFR 60-741.2(s)(4).

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 used in systemic discrimination cases.

Rehire

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

Relevant Labor Area

See the definition of "Labor Area."

Religious Accommodation

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

Requisite Skills

Those minimum skills needed to perform a job satisfactorily.

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.

Rightful Place

The position, both economically and in terms of employment status (usually job position and seniority), that the victim of discrimination would have held if the discrimination had not occurred. See "Make-Whole Relief."

Section 503

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

Seniority

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

Sexual Orientation

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

Shortfall

The difference between the actual number of persons in the nonfavored group who were selected for the employment opportunity at issue (hires, promotions, etc.) and the number expected to have been selected in proportion to their representation in the pool of qualified candidates, absent discrimination. This concept does not generally apply to compensation discrimination cases, which revolve around wage-setting decisions, not decisions involving job opportunities.

Show Cause Notice (SCN)

A letter from OFCCP to the contractor ordering it to provide evidence demonstrating why enforcement proceedings should not be instituted. The Show Cause Notice provides that the contractor must come into compliance within 30 calendar days or OFCCP may recommend the commencement of enforcement proceedings.

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 (SSEG)

SSEGs are used in examining potential compensation discrimination. SSEGs are sometimes referred to as a pay analysis groups and are viewed by the agency as equivalent terms. An SSEG is a group of employees (potentially from multiple job titles, units, categories and/or job groups) who are comparable for purposes of analyzing a contractor's pay practices, 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.

Standard Deviation

As an alternative to probability values, statisticians often express the divergence between actual and expected outcomes in units called standard deviations. The larger the difference in standard deviations, the smaller the probability that the difference is due to random chance factors alone. See also "Statistically Significant."

Standard Form 100

See "EEO-1 Report."

Standard Metropolitan Statistical Area (SMSA)

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

Statistical Evidence

Statistical evidence means hypothesis testing, controlling for the major legitimate, nondiscriminatory measureable parameters and variables used by employers (including, as appropriate, other demographic variables, test scores, geographic variables,

performance evaluations, years of experience, quality of experience, years of service, quality and reputation of previous employers, years of education, years of training, quality and reputation of credentialing institutions, etc.), related to the probability of outcomes occurring by chance and/or analyses reflecting statements concluding that a difference in employment selection rates or compensation decisions is statistically significant by reference to any one of the following equivalent statements: 1) the disparity is two or three times larger than its standard error (*i.e.*, a standard deviation of two or more); 2) the Z statistic has a value greater than two or three; or 3) the probability value is less than 0.05 or 0.01. See also "Anecdotal Evidence" and "Nonstatistical Evidence."

Statistically Significant

The results of statistical analyses (statistical evidence) are "statistically significant" if the probability the results occurred by chance is so small that chance can reasonably be ruled out as the cause. When the difference between actual and expected values is greater than 1.96 standard deviations, the probability the disparity occurred by chance is less than 5%. In employment discrimination cases, courts generally consider a difference of two or more standard deviations to be "statistically significant" and allow a valid statistical inference of discrimination to be drawn.

Subcontract

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

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

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

Subcontractor

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

Subjective Criterion

An employment qualification, selection standard or process is subjective if it requires judgment in its application, such that different people applying the standard would not necessarily reach the same conclusion. Whether an applicant is certified to operate a

particular machine is objective; whether an applicant has "good machine-handling skills and experience" is subjective. Compare with "Objective Criterion."

Support Data

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

Systemic Discrimination

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

Termination of Employment

Separation of an employee from the active and inactive payroll.

Terms and Conditions of Employment

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

Third-Party Complaint

A complaint filed by an individual or individuals on behalf of another individual or a group of people. See 41 CFR 60-300.61(b)(2) and 60-741.61(c)(2).

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

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

Tolling

The suspension of the running of a statute of limitations for equitable reasons. Because the Title VII 180-day limit on filing a charge with the EEOC has been held to be a statute of limitations, there have been numerous court cases discussing tolling of that limit. By comparison, the regulations for the three laws OFCCP enforces provide for the filing of a complaint within 180 calendar days (or, for VEVRAA and Section 503, 300 calendar days) of the alleged violation unless the time for filing is extended by the Director for good cause shown. There is no similar good cause language in Title VII. The good cause authority allows the Director to waive the 180-day or 300-day limit without raising questions of tolling.

Training Agency

Any person, organization or agency whose purpose is to train workers.

Transfer

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

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).

Undue Hardship (Disability)

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

Undue Hardship (Religious Accommodation)

"Undue hardship" is the defense for not providing a needed religious accommodation. To demonstrate "undue hardship" in this context, a contractor must show that providing the proposed accommodation would pose "more than de minimis" cost or burden. Costs to be considered include not only direct monetary costs, but also the burden on the conduct of the employer's business. For example, courts have found undue hardship where the accommodation diminishes efficiency in other jobs, infringes on other

employees' job rights or benefits, impairs workplace safety, or causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work.

Uniformly Applied

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

Uniform Guidelines on Employee Selection Procedures (UGESP)

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

Validation

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

Veteran

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

VETS-4212 Report

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

VEVRAA

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

ensure equal employment opportunity. Federal contractors and subcontractors with 50 or more employees and a contract of $150,000 or more have additional affirmative action obligations, which include the development of a written affirmative action program.

Victim Specific Relief

See "Individual Relief."

Violation

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

White (not Hispanic or Latino)

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

Work Assignment

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

GLOSSARY OF ABBREVIATIONS

AA	Affirmative Action
AAP	Affirmative Action Program
ACS	American Community Survey
ADA	Americans with Disabilities Act
ADD	Assistant District Director
ALJ	Administrative Law Judge
AmInd/AlNat	American Indian/Alaskan Native
AO	Area Office
APA	Administrative Procedure Act
ASCN	Amended Show Cause Notice
Asian/PI	Asian American/Pacific Islander
BFOQ	Bona Fide Occupational Qualification
BLS	Bureau of Labor Statistics
CA	Conciliation Agreement
CBA	Collective Bargaining Agreement
CEO	Chief Executive Officer
CFR	Code of Federal Regulations
CMCE	Corporate Management Compliance Evaluation
CMS	Case Management System
CO	Compliance Officer
CC-4	Complaint Form titled "Complaint Involving Employment Discrimination by a Federal Contractor or Subcontractor"
CC-53	Case Chronology Log
CY	Current Year
DD	District Director

DD-214	U.S. Department of Defense form that identifies the veteran's condition of discharge - honorable, general, other than honorable, dishonorable or bad conduct
DO	District Office
DOJ	U.S. Department of Justice
DOL	U.S. Department of Labor
DOT	U.S. Department of Transportation
DPO	Division of Program Operations
EDGAR	Electronic Data Gathering, Analysis and Retrieval
EEDS	Equal Employment Data System
EEO	Equal Employment Opportunity
EEO Tab	EEO Tabulation
EEO-1	Standard Form 100 – Employer Information Report
EEOC	Equal Employment Opportunity Commission
EIS	Executive Information System
ERRD	Employment Referral Resource Directory
ESDS	Employment Service Delivery System
ETA	Employment and Training Administration
FAAP	Functional Affirmative Action Program
FCCM	Federal Contract Compliance Manual
FCSS	Federal Contractor Selection System
FEP	Fair Employment Practices
FICA	Federal Insurance Contributions Act
FMLA	Family and Medical Leave Act
FOIA	Freedom of Information Act
FR	Federal Register
FUTA	Federal Unemployment Tax Act
GSA	General Services Administration

HRIS	Human Resources Information System
INAERP	Indian and Native American Employment Rights Program
IPEDS	Integrated Postsecondary Education Data System
IRA	Impact Ratio Analysis
IRS	Internal Revenue Service
JAAR	Job Area Acceptance Range
JRC	Joint Reporting Committee
LVER	Local Veterans' Employment Representative – See VWS
MJL	Mandatory Job Listing
MOU	Memorandum of Understanding
MSA	Metropolitan Statistical Area
NAICS	North American Industrial Classification System (replaced SIC)
NLRA	National Labor Relations Act
NORI	Notice of Results of Investigation
NOV	Notice of Violation
NSOL	National Solicitor of Labor
O*NET	Occupational Information Network
ODEP	Office of Disability Employment Policy
OFCCP	Office of Federal Contract Compliance Programs
OFIS	OFCCP Information System
OLMS	Office of Labor-Management Standards
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
PDN	Predetermination Notice
PII	Personally Identifiable Information
PY	Prior Year
RD	Regional Director

RO	Regional Office
ROC	Regional Office Outreach Coordinator
RSOL	Regional Solicitor of Labor
S&S	Supply and Service
SAM	System for Award Management
SCER	Standard Compliance Evaluation Report
SCN	Show Cause Notice
SEC	Securities and Exchange Commission
Section 503	Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793), as amended
SMSA	Standard Metropolitan Statistical Area
SOL	Solicitor of Labor
SSEG	Similarly Situated Employee Group
TERO	Tribal Employment Rights Office
Title VII	Title VII of the Civil Rights Act of 1964, as amended
UGESP	Uniform Guidelines on Employee Selection Procedures
VETS	Veterans' Employment and Training Service
VEVRAA	Vietnam Era Veterans' Readjustment Assistance Act, as amended
WHD	Wage and Hour Division

APPENDICES A-1 – A-13

Updated 2019

Appendix Number	Appendix Title
A-1	Supply and Service Standard Compliance Evaluation Report (SCER)
A-2	SCER Instructions
A-3	Index for a Supply and Service Review
A-4	Sample On-site Review Plan
A-5	Index for a Construction Review
A-6	SCER (Construction)
A-7	Special Remedial Considerations Applicable to Stock
A-8	Index for a Complaint File
A-9	Retaliation and Interference: Complaint Processing Outline and Checklist
A-10	Investigative Report
A-11	Information Related to Filing Suit Under Title VII of the Civil Rights Act, Title I of the ADA and the Equal Pay Act
A-12	"MacMillan" Factors Concerning Successor Employer Liability
A-13	Transmittal Memorandum for an Enforcement Recommendation

APPENDIX A-1: U.S. DEPARTMENT OF LABOR OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS SUPPLY AND SERVICE STANDARD COMPLIANCE EVALUATION REPORT (SCER)

CONTRACTOR INFORMATION	
1. ESTABLISHMENT/FUNCTIONAL UNIT NAME & ADDRESS CMS Control #	**2. PARENT NAME & ADDRESS**

3. COMPLAINTS INVESTIGATED DURING REVIEW

☑ =If resolved during the review, check box.

_____ ☐ # _____ ☐ # _____ ☐ # _____ ☐ # _____ ☐

4. CONTRACT COVERAGE

Contract information included in CMS? Yes ☐ No ☐

Does the contract information cover the entire evaluation period? Yes ☐ No ☐

Fill in contract information below.

AWARDING AGENCY	IF SUBCONTRACTOR, NAME OF PRIME CONTRACTOR	CONTRACT OR PURCHASE ORDER #	CONTRACT DOLLAR AMOUNT	BEGIN AND END DATES

5. COMPANY CONTACTS		Name	Title	Phone/E-mail
Establishment/ Functional Unit	CEO/ Dir/Mgr.			
	EEO/AA			
Corporate	CEO			
	EEO/AA			
Outside Representative				

6. BACKGROUND INFORMATION

Type of Industry:

Specific Facility Function:

CONTRACTOR INFORMATION
7. COMPLIANCE EVALUATION INFORMATION FAAP Review? Yes ☐ No ☐ Focused Review? Yes ☐ No ☐ CMCE? Yes ☐ No ☐ (If yes, complete SCER Part D)

Date Scheduling Letter Received by Contractor	AAP Year	Prior Year Data Period	Current Year Data Period (if applicable)	Union	If unionized, % of unionized workforce	NAICS
				Y / N	%	

Geographic Area:

% Female	% Minority	% Black	% Hispanic	% Asian/PI	% AmInd/AlNat

Contractor's Employment Data

Total # Employees	Total # Female	Total # Minority	Total # Black	Total # Asian/PI	Total # Hispanic	Total # AmInd/ AlNat	Total # Protected Veterans	Total # Ind. with Disabilities
	% Female	% Minority	% Black	% Asian/PI	% Hispanic	% AmInd/ AlNat	% Protected Veterans	% Ind. with Disabilities

CASE SUMMARY AND RECOMMENDATIONS

Provide an assessment of compliance. If there are findings of violation(s), list **all** findings in this section. For each one, provide a brief explanation of the supporting facts and evidence, briefly describe conciliation efforts and specify the recommended corrective action(s). For each finding, reference where it is discussed in the SCER. If there is no finding of a violation, and a closure letter is to be issued, provide a brief description of the basis for this action. Be sure to indicate all document(s) to be issued to the contractor (*e.g.,* Predetermination Notice, Notice of Violation, Show Cause Notice, Conciliation Agreement or closure letter).

On-site: Yes ☐ No ☐ If yes, state reason (*e.g.,* indicator, quality check, etc.).

Early Resolution Procedures? Yes ☐ No ☐

	COMPLIANCE OFFICER (CO)	**ASSISTANT DISTRICT DIRECTOR (ADD)**	**DISTRICT DIRECTOR (DD) REGIONAL DIRECTOR (RD)**
Signature			
Date			

PART A: PREPARATION

PAST PROBLEMS, KNOWN COMPLAINTS OR ENFORCEMENT PROCEEDINGS, AND COLLABORATION WITH OTHER AGENCIES

1. Past Problems. If there were no prior OFCCP compliance reviews or investigations of the contractor, check here and go on to item 2 below. ( )

a. Past Problems? Yes / No Explain if yes and identify source materials.

b. Recurrence? Yes / No Explain if yes.

2. Known Complaints or Enforcement Proceedings. If there are no complaints filed or pending with other agencies, *e.g.,* EEOC, WHD or OSHA, and no new or ongoing enforcement proceedings by any of these agencies, check here and go on to the next page. ( )

If there are complaints or enforcement proceedings, for each one, list the agency involved, the basis, issue, current status and the area of the contractor's workforce it appears to concern. Add additional sheets as an attachment to the SCER, if needed. If at any point in the review, you determine there is a related potential problem not investigated in the complaints or enforcement proceedings, complete part (b) below.

a. List Known Complaints or Enforcement Proceedings.

Agency	Basis	Issue	Status	Job Group/ Department (if available)

b. Related Problem Not Investigated in the Known Complaint or Enforcement Proceedings? Yes/No Explain if yes.

3. Explain any collaboration with, or referrals to, other agencies, *e.g.,* EEOC, WHD or OSHA, during the compliance evaluation. List agency, basis for referral or collaboration and the issue(s).

PART B: DESK AUDIT

I. INITIAL REVIEW OF AAP AND SUPPORT DATA SUBMISSIONS

EXECUTIVE ORDER 11246	INCLUDED IN AAP? Indicate Y/N	ACCEPTABLE? (Text Only) Y/N	If NO, Include in PART B.II
ORGANIZATIONAL PROFILE (Organizational Display or Workforce Analysis) 41 CFR 60-2.11			
JOB GROUP ANALYSIS 41 CFR 60-2.12			
EXECUTIVE ORDER 11246 UTILIZATION ANALYSIS			
PLACEMENT OF INCUMBENTS IN JOB GROUPS 41 CFR 60-2.13			
DETERMININATION OF AVAILABILITY 41 CFR 60-2.14			
COMPARISON OF INCUMBENCY TO AVAILABILITY 41 CFR 60-2.15			
PLACEMENT GOALS 41 CFR 60-2.16			
ADDITIONAL REQUIRED ELEMENTS			
DESIGNATION OF RESPONSIBILITY 41 CFR 60-2.17(a)			
IDENTIFICATION OF PROBLEM AREAS 41 CFR 60-2.17(b)			
ACTION-ORIENTED PROGRAMS 41 CFR 60-2.17(c)			
INTERNAL AUDIT AND REPORTING SYSTEMS 41 CFR 60-2.17(d)			
ITEMIZED LISTING SUPPORT DATA			
EXECUTIVE ORDER 11246	**INCLUDED IN DESK AUDIT SUBMISSION? Indicate Y/N**	**ACCEPTABLE? (Text Only) Y/N**	**If NO, Include in PART B.II**
COPIES OF EEO-1 REPORTS FOR LAST THREE YEARS			
COPY OF BARGAINING AGREEMENTS, IF APPLICABLE			
REPORT ON GOALS			
APPLICANT FLOW Internet Applicant ☐			
HIRES			
PROMOTIONS (including pool data)			

TERMINATIONS (including incumbency data)			
LAYOFFS/RECALLS (if applicable)			
EMPLOYEE LEVEL COMPENSATION DATA			
SECTION 503 AND VEVRAA	**INCLUDED IN AAP? Indicate Y/N**	**ACCEPTABLE? (text only) Indicate Y/N**	**If NO, include in Part B. II**
EEO POLICY STATEMENT 41 CFR 60-300.44(a); 41 CFR 60-741.44(a)			
REVIEW OF PERSONNEL PROCESSES 41 CFR 60-300.44(b); 41 CFR 60-741.44(b)			
REVIEW OF PHYSICAL AND MENTAL JOB QUALIFICATIONS 41 CFR 60-300.44(c); 41 CFR 60-741.44(c)			
REASONABLE ACCOMMODATION 41 CFR 60-300.44(d); 41 CFR 60-741.44(d)			
HARASSMENT PREVENTION 41 CFR 60-300.44(e); 41 CFR 60-741.44(e)			
EXTERNAL DISSEMINATION OF AFFIRMATIVE ACTION POLICY 41 CFR 60-300.44(f)(1)(ii); 41 CFR 60-741.44(f)(1)(ii)			
ASSESSMENT OF EACH OUTREACH & POSITIVE RECRUITMENT ACTIVITY 41 CFR 60-300.44(f)(3); 41 CFR 60-741.44(f)(3)			
ASSESSMENT OF TOTALITY OF OUTREACH & POSITIVE RECRUITMENT EFFORTS 41 CFR 60-300.44(f)(3); 41 CFR 60-741.44(f)(3)			
INTERNAL DISSEMINATION OF EEO POLICY 41 CFR 60-300.44(g); 41 CFR 60-741.44(g)			
AUDIT AND REPORTING SYSTEM 41 CFR 60-300.44(h); 41 CFR 60-741.44(h)			
ESTABLISHMENT OF RESPONSIBILITY 41 CFR 60-300.44(i); 41 CFR 60-741.44(i)			
TRAINING TO ENSURE AAP IMPLEMENTATION 41 CFR 60-300.44(j); 41 CFR 60-741.44(j)			
DATA COLLECTION ANALYSIS 41 CFR 60-741.44(k); 41 CFR 60-300.44(k)			
SECTION 503 UTILIZATION GOAL AND ANALYSIS 41 CFR 60-741.45			
VEVRAA BENCHMARK FOR HIRING 41 CFR 60-300.45			

ITEMIZED LISTING DATA		
SECTION 503 AND VEVRAA	**INCLUDED IN DESK AUDIT SUBMISSION? Indicate Y/N**	**ACCEPTABLE? Y/N IF NO, INCLUDE IN PART B.II**
COPIES OF ANY WRITTEN REASONABLE ACCOMMODATION POLICIES, AND DOCUMENTATION OF ANY REQUESTS RECEIVED AND THEIR RESOLUTION		
MOST RECENT ASSESSMENT OF PERSONNEL PROCESSES		
MOST RECENT ASSESSMENT OF PHYSICAL AND MENTAL QUALIFICATIONS		
OTHER VEVRAA CONSIDERATIONS	**INDICATE Y/N**	**PROVIDE ANY RELEVANT COMMENTS OR OBSERVATIONS**
LISTED JOB OPENINGS WITH EMPLOYMENT SERVICE DELIVERY SYSTEM (41 CFR 60-300.5(A)		
FILED CURRENT VETS-4212 REPORT (41 CFR 300.60(C))		

II. SUMMARY OF AAP ACCEPTABILITY

Summarize all AAP and support data problems identified during the desk audit and any actions taken or plans to resolve (if the action is to take place during or after on-site). If investigated on-site, provide an explanation of the findings, the type of problem (Executive Order 11246, Section 503, VEVRAA), whether and how the problem was resolved, and what remedial action(s) was taken. (Add additional sheets as an attachment to the SCER, if needed).

☐ Continued

#	AAP AND ITEMIZED LISTING DATA ACCEPTABILITY PROBLEMS	On-site ☑
1	**PROBLEM:** **ACTION TAKEN:** **FINDINGS:** **RESOLUTION:**	☐
2	**PROBLEM:** **ACTION TAKEN:** **FINDINGS:** **RESOLUTION:**	☐
3	**PROBLEM:** **ACTION TAKEN:** **FINDINGS:** **RESOLUTION:**	☐
4	**PROBLEM:** **ACTION TAKEN:** **FINDINGS:** **RESOLUTION:**	☐
5	**PROBLEM:** **ACTION TAKEN:** **FINDINGS:** **RESOLUTION:**	☐
6	**PROBLEM:** **ACTION TAKEN:** **FINDINGS:** **RESOLUTION:**	☐

III. EEO-1 WORKFORCE AND TREND ANALYSIS

☐ Continued

EEO-1 Workforce Analysis. Identify whether there is a difference in the totals between the most recent EEO-1 report and AAP workforce totals before proceeding to more complex analyses on employment activity. If there is a difference, review the personnel activity data to see if activities such as hires and terminations explain the difference. If not, clarification is needed from the contractor to ensure the entire workforce is included in the AAP and to ensure that all personnel activity has been reported.

Total # Employees from most recent EEO-1 report	Total # Employees from AAP

Does personnel activity data (hires and terminations) reflect the difference in totals?

Yes _____ No _____ (if no, explain below)

If there is a difference in totals not accounted for by personnel activity data did contractor provide an acceptable explanation?

Yes _____ No _____Not applicable _____ (If no, explain below)

EEO-1 TREND ANALYSIS RESULTS

1. Trends. Examine long-term and short-term trends of minority and female representation in: (a) the total workforce, (b) white-collar EEO-1 categories and (c) blue-collar EEO-1 categories. If there are any negative trends, discuss below. If there are no negative trends, check here and go on to number 2. ( )

2. Job Category Patterns. Determine if there are any negative trends of minority or female representation by EEO-1 job category. If there were negative trends, explain below. If there are no negative trends check here and go on to number 3. ( )

3. Particular Group. Examine the EEO-1 report to see if personnel activity data reported as minority and nonminority could be potentially masking a particular minority group issue. If the assessment is yes, collect personnel activity by race. Determine if there are any substantial disparities in the trends of a particular minority group, or of men or women of a particular minority group, either in the workforce as a whole or in specific job groups. If disparities exist, explain them below.

IV. EVALUATION OF GOOD FAITH EFFORTS - EXECUTIVE ORDER 11246

Identify Executive Order 11246 goal areas where goals were established but not met. For each goal area not met, identify the job group; describe whether goals were for minorities, females or both for the prior and current year; and identify the expected goal and actual goal. If there is a difference between the expected and actual goals, provide the contractor's explanation for the difference and pertinent AAP commitments. Identify additional information that will be requested and whether the issue needs to be investigated on-site. Provide an explanation of any findings, indicating whether and how the problem was resolved, and what remedial action(s) was taken.

#	GOAL AREA PROBLEMS	On-site ☑
1	**GOAL AREA (PY/CY):** **EXPLANATION/COMMITMENTS:** **ADDITIONAL INFO:** **FINDINGS:** **RESOLUTION:**	☐
2	**GOAL AREA (PY/CY):** **EXPLANATION/COMMITMENTS:** **ADDITIONAL INFO:** **FINDINGS:** **RESOLUTION:**	☐
3	**GOAL AREA (PY/CY):** **EXPLANATION/COMMITMENTS:** **ADDITIONAL INFO:** **FINDINGS:** **RESOLUTION:**	☐
4	**GOAL AREA (PY/CY):** **EXPLANATION/COMMITMENTS:** **ADDITIONAL INFO:** **FINDINGS:** **RESOLUTION:**	☐
5	**GOAL AREA (PY/CY):** **EXPLANATION/COMMITMENTS:** **ADDITIONAL INFO:** **FINDINGS:** **RESOLUTION:**	☐
6	**GOAL AREA (PY/CY):** **EXPLANATION/COMMITMENTS:** **ADDITIONAL INFO:** **FINDINGS:** **RESOLUTION:**	☐

V. SECTION 503 UTILIZATION ANALYSIS AND OUTREACH ASSESSMENT

Utilization Analysis. Identify whether the contractor met the 7 percent disability utilization goal in each of its AAP job groups or, if the contractor has fewer than 100 employees, in the contractor's workforce as a whole. If the goal was not met, the contractor must take steps to determine whether and where impediments to equal employment opportunity exist. If any problem areas are identified, the contractor must develop and execute action-oriented programs designed to correct them. Identify the steps the contractor took to determine if impediments exist, and the action-oriented programs developed to correct any identified problem areas. Identify whether the issue needs to be investigated on-site. Provide an explanation of any findings, indicating whether and how the problem was resolved, and what remedial action(s) was taken. Also, explain any progress the contractor is making in the current year, if the contractor is six months or more into its current year AAP.

#	UTILIZATION GOAL PROBLEM AREAS – MORE THAN 100 EMPLOYEES	On-site ☑
	If contractor set goals by job group, did the contractor meet the 7% utilization goal in each job group? Yes ☐ No ☐ N/A ☐ If no, identify the job group(s) where the goal was not met (including percent achieved by the contractor), the steps taken to identify problem areas and the action-oriented programs to correct identified problem areas. Add more rows as needed.	
1	**JOB GROUP & PERCENT ACHIEVED:**	☐
	STEPS TAKEN:	
	PROBLEM AREAS IDENTIFIED:	
	ACTION-ORIENTED PROGRAMS:	
	FINDINGS & RESOLUTION:	
	CURRENT YEAR PROGRESS:	
2	**JOB GROUP & PERCENT ACHIEVED:**	☐
	STEPS TAKEN:	
	PROBLEM AREAS IDENTIFIED:	
	ACTION-ORIENTED PROGRAMS:	
	FINDINGS & RESOLUTION:	
	CURRENT YEAR PROGRESS:	
3	**JOB GROUP & PERCENT ACHIEVED:**	☐
	STEPS TAKEN:	
	PROBLEM AREAS IDENTIFIED:	
	ACTION-ORIENTED PROGRAMS:	
	FINDINGS & RESOLUTION:	
	CURRENT YEAR PROGRESS:	
4	**JOB GROUP & PERCENT ACHIEVED:**	☐
	STEPS TAKEN:	
	PROBLEM AREAS IDENTIFIED:	

#	UTILIZATION GOAL PROBLEM AREAS – MORE THAN 100 EMPLOYEES	On-site ☑
	ACTION-ORIENTED PROGRAMS:	
	FINDINGS & RESOLUTION:	
	CURRENT YEAR PROGRESS:	
5	**JOB GROUP & PERCENT ACHIEVED:**	
	STEPS TAKEN:	
	PROBLEM AREAS IDENTIFIED:	☐
	ACTION-ORIENTED PROGRAMS:	
	FINDINGS & RESOLUTION:	
	CURRENT YEAR PROGRESS:	

UTILIZATION GOAL PROBLEM AREAS – FEWER THAN 100 EMPLOYEES	On-site ☑
If contractor opted to set goal for entire workforce, did the contractor meet its 7% utilization goal? Yes ☐ No ☐ N/A ☐ (if no, identify problem area(s)) If no, identify the percent achieved by the contractor for its workforce as a whole, the steps taken to identify problem areas and the action-oriented programs to correct identified problem areas.	
PERCENT ACHIEVED:	
STEPS TAKEN:	
PROBLEM AREAS IDENTIFIED:	☐
ACTION-ORIENTED PROGRAMS:	
FINDINGS & RESOLUTION:	
CURRENT YEAR PROGRESS:	

SECTION 503 Outreach Assessment. Indicate whether the contractor evaluated the effectiveness of each outreach and positive recruitment effort, and whether the contractor concluded that the totality of its efforts were effective in identifying and recruiting qualified individuals with disabilities. Also, indicate whether the contractor's conclusion is reasonable and, if not, explain why. If the contractor concludes that its efforts were not effective, list the alternative efforts that it has identified. Identify any additional information that will be requested and whether the issue needs to be investigated on-site. Provide an explanation of any findings, indicating whether and how the problem was resolved, and what remedial action(s) was taken.

SECTION 503 OUTREACH ASSESSMENT	On-site ☑
Did the contractor evaluate the effectiveness of each outreach and positive recruitment effort it undertook, and draw a conclusion as to whether the totality of its efforts were effective in identifying and recruiting qualified individuals with disabilities? If not, explain in the Findings section below. Yes ☐ No ☐	☐
Was the contractor's conclusion reasonable? If no, explain why in the Findings section below. Yes ☐ No ☐	☐
Additional Information to be Requested:	☐
Findings:	☐

VI. VEVRAA OUTREACH ASSESSMENT

VEVRAA Outreach Assessment. Indicate whether the contractor evaluated the effectiveness of each outreach and positive recruitment effort, and whether the contractor concluded that the totality of its efforts were effective in identifying and recruiting qualified protected veterans. Also, indicate whether the contractor's conclusion is reasonable and, if not, explain why. If the contractor concludes that its efforts were not effective, list the alternative efforts that it has identified. Identify any additional information that will be requested and whether the issue needs to be investigated on-site. Provide an explanation of any findings, indicating whether and how the problem was resolved, and what remedial action(s) was taken.

VEVRAA OUTREACH ASSESSMENT	On-site ☑
Did the contractor evaluate the effectiveness of each outreach and positive recruitment effort it undertook, and draw a conclusion as to whether the totality of its efforts were effective in identifying and recruiting qualified protected veterans? If not, explain in the Findings section below. Yes ☐ No ☐	☐
Was the contractor's conclusion reasonable? If no, explain why not in the Findings section below. Yes ☐ No ☐	☐
Additional Information to be Requested:	☐
Findings:	☐

VII. EMPLOYMENT ACTIVITY DATA ANALYSES

Desk Audit Analyses. Summarize any potential systemic or individual discrimination found under any legal authority during the desk audit from analyzing employment activity data, including compensation, hires, terminations and promotions (*e.g.,* statistical indicators showing disparate impact against minorities or women). Include a discussion of the nature of any indicators of discrimination, relevant evidence collected and reviewed at desk audit, actions (if any) taken to resolve the indicators, and whether and how the problem was resolved. If the discrimination indicator could not be resolved through additional data analysis during pre-on-site or early resolution procedures, check the box to indicate if the compliance evaluation will continue with an on-site investigation.

EMPLOYMENT DATA ANALYSES RESULTS	On-site ☑
HIRING ANALYSIS RESULTS:	☐
TERMINATION ANALYSIS RESULTS.	☐
PROMOTION ANALYSIS RESULTS.	☐
COMPENSATION ANALYSIS RESULTS.	☐

VIII. OTHER PROBLEMS FOR ON-SITE INVESTIGATION

Identify any other problems that require additional information and/or require an on-site review, such as a pay secrecy policy or minority and female representation, as applicable within departments/units; possible lines of progression (within department or across department lines); grade or salary levels; supervisory positions vs. those supervised, etc. Provide an explanation of any findings, indicating how the problem was resolved and what remedial action(s) was taken. If the problems could not be resolved through additional records requests during pre-on-site or early resolution procedures, check the on-site box. Desk audit discrimination indicators are reported in Part B, VII.

#	PROBLEM AREAS	On-site ☑
1	**PROBLEM AREA:** **ADDITIONAL INFO:** **FINDINGS:** **RESOLUTION:**	☐
2	**PROBLEM AREA:** **ADDITIONAL INFO:** **FINDINGS:** **RESOLUTION:**	☐
3	**PROBLEM AREA:** **ADDITIONAL INFO:** **FINDINGS:** **RESOLUTION:**	☐
4	**PROBLEM AREA:** **ADDITIONAL INFO:** **FINDINGS:** **RESOLUTION:**	☐
5	**PROBLEM AREA:** **ADDITIONAL INFO:** **FINDINGS:** **RESOLUTION:**	☐

PART C: ON-SITE INVESTIGATION

I. IMPLEMENTATION: EQUAL OPPORTUNITY CLAUSE AND OTHER REQUIREMENTS UNDER EXECUTIVE ORDER 11246, SECTION 503, VEVRAA AND EXECUTIVE ORDER 13496

Determine whether the contractor complied with the following requirements (Yes/No). If "Yes," indicate how this was confirmed. If "No," explain the problem, whether it was resolved and, if resolved, indicate how. If requirements are not resolved, they must be included in the **Case Summary and Recommendations** section**.**

Applicable under Executive Order 11246, Section 503 and VEVRAA
INCLUDED EQUAL OPPORTUNITY CLAUSE IN SUBCONTRACTS AND PURCHASE ORDERS (41 CFR 60- 1.4, 41 CFR 60-300.5, 41 CFR 60-741.5)
POSTED CURRENT NOTICES, INCLUDING THE "EEO IS THE LAW" POSTER AND ANY REQUIRED SUPPLEMENT IN CONSPICUOUS PLACES, ELECTRONICALLY WHERE REQUIRED (41 CFR 60- 1.4, 41 CFR 60-300.5, 41 CFR 60-741.5)
NOTIFIED PARTIES WITH WHICH IT HAS A CBA OF ITS EEO OBLIGATIONS (41 CFR 60- 1.4, 41 CFR 60-300.5, 41 CFR 60-741.5)
INCLUDED EEO LANGUAGE IN JOB ADVERTISEMENTS (41 CFR 60-1.4, 41 CFR 60-300.5, 41 CFR 60-741.5)
Applicable under Executive Order 11246 only
POSTED PAY TRANSPARENCY NONDISCRIMINATION PROVISION (PHYSICALLY OR ELECTRONICALLY) AND INCLUDED IT IN CURRENT EMPLOYEE MANUALS AND HANDBOOKS (41 CFR 60-1.35(c))

Applicable under Section 503 and VEVRAA
MADE AAPS AVAILABLE FOR INSPECTION, AND POSTED LOCATION AND HOURS (41 CFR 60-300.41, 41 CFR 60-741.41)
COMPLIED WITH REQUIREMENTS RELATED TO DISABILITY-RELATED QUESTIONS AND MEDICAL EXAMINATIONS (41 CFR 60-300.23, 41 CFR 60-741.23)
COMPLIED WITH THE REQUIREMENTS RELATED TO CONFIDENTIALITY AND USE OF MEDICAL INFORMATION (41 CFR 60-300.23(d), 41 CFR 60-741.23(d)
COMPLIED WITH REQUIREMENTS RELATED TO THE INVITATION TO SELF-IDENTIFY AS A PROTECTED VETERAN AND THE INVITATION TO SELF-IDENTIFY AS AN INDIVIDUAL WITH A DISABILITY (FORM CC-305) (41 CFR 60-300.42, 41 CFR 60-741.42)
Applicable under Executive Order 13496 only
POSTED NOTICE OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (Required poster and electronic posting, if applicable) (29 CFR 471.2)
INCLUDED NOTICE OF EXECUTIVE ORDER 13496 OBLIGATIONS IN SUBCONTRACTS (29 CFR 471, Subpart A, app. A)

II. IMPLEMENTATION OF REGULATIONS PROHIBITING DISCRIMINATION ON THE BASIS OF SEX

Verify the contractor's implementation of the regulations prohibiting discrimination on the basis of sex at 41 CFR Parts 60-1 and 60-20. If the contractor is in compliance, describe below how this determination was made (*e.g.,* specifically reference documentation and other evidence reviewed that is relevant to the determination, and describe/summarize relevant interview statements). If not, explain the problem, whether it has been resolved and, if so, how. If you identify a potential discrimination problem, include the issue in Part C, V – Problems Identified During the On-site Investigation.

SEX DISCRIMINATION REGULATIONS, 41 CFR PART 60-20 VIOLATION? YES / NO EXPLAIN
Discrimination Based on Pregnancy, Childbirth and Related Medical Conditions (41 CFR 60-20.5) Review the contractor's job policies and practices with regard to pregnancy, childbirth and related medical conditions. Does the contractor treat employees and applicants affected by pregnancy, childbirth and related medical conditions the same as employees affected by other medical conditions who are similar in their ability or inability to work? Examine the contractor's policies and practices related to: (a) Health insurance; (b) Job accommodations; and (c) Leave If such policies or practices are the same for pregnancy-related conditions and other medical conditions that are similar in their effect on employees' ability to work, examine whether such policies or practices have an adverse impact on the basis of sex and, if so, whether the contractor has shown that such policies or practices are job-related and consistent with business necessity.
Sexual Harassment and Hostile Work Environments (41 CFR 60-20.8) Is there evidence of unwelcome sexual advances, requests for sexual favors, offensive remarks about a person's sex, or other verbal or physical conduct of a sexual nature under any of the following circumstances? 1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; 2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or 3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance; or creating an intimidating, hostile or offensive working environment.

III. IMPLEMENTATION OF THE GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION OR NATIONAL ORIGIN

Verify the contractor's implementation of the regulations prohibiting discrimination on the basis of religion and national origin at 41 CFR Part 60-1, and the Guidelines on Discrimination Because of Religion or National Origin at 41 CFR Part 60-50. If the contractor is in compliance, describe below how this determination was made (*e.g.,* reference documentation and other evidence that was reviewed, and describe statements made during interviews). If not, explain the problem, whether it has been resolved and, if so, how. If you identify a potential discrimination problem, include the issue in Part C, V –Problems Identified During the On-site Investigation.

GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION, 41 CFR PART 60-50 VIOLATION? YES/ NO EXPLAIN
Equal Employment Policy (41 CFR 60-50.2) 1. Contractor does/does not discriminate on the basis of religion. If discrimination is found, please explain the problem in Part C, V – Problems Identified During the On-site Investigation, and describe any related violation findings in the Case Summary and Recommendations section. 2. Describe any outreach efforts made by the contractor, if required to address EEO disparities based on religion.
Accommodations to Religious Observance and Practice (41 CFR 60-50.3) Contractor provides requested accommodations for religious observances and practices unless it can demonstrate that providing an accommodation would cause an undue hardship on the contractor's business. If accommodations were wrongly denied, please explain.
GUIDELINES ON DISCRIMINATION BECAUSE OF NATIONAL ORIGIN, 41 CFR PART 60-50 VIOLATION? YES/ NO EXPLAIN
Equal Employment Policy (41 CFR 60-50.2) 1. Contractor does/does not discriminate on the basis of national origin. If discrimination is found, please explain the problem in Part C, V – Problems Identified During the On-site Investigation, and describe any related violation findings in the Case Summary and Recommendations section. 2. Describe any outreach efforts made by the contractor, if required to address EEO disparities based on national origin.

IV. INVESTIGATING POTENTIAL DISCRIMINATION IDENTIFIED DURING DESK AUDIT

Discrimination Investigative Results. Record the on-site investigative findings for any potential systemic or individual discrimination that was identified during desk audit and recorded in Part B, VII of the SCER (*e.g.,* statistical indicators showing disparate impact against minorities or women in hiring or compensation, evidence of disparate treatment). Include a discussion of the nature of the problem, relevant evidence collected and reviewed, actions (if any) taken to resolve the problem, and whether and how the problem was resolved. Also include any findings of violation in **Case Summary and Recommendations** section.

SUMMARY OF PROBLEMS, ACTIONS TAKEN AND RESOLUTION **(Add additional sheets as an attachment to the SCER, if needed)**

V. PROBLEMS IDENTIFIED DURING THE ON-SITE INVESTIGATION

Investigating Problems Identified On-site. Record the on-site investigative findings for any problems discovered during the on-site investigation (*e.g.,* anecdotal evidence describing discrimination or harassment against employees based on disability, protected veterans' status, sexual orientation or gender identity, or suggesting that the contractor prohibits employees from discussing their pay). Include a discussion of the nature of the problem, relevant evidence collected and reviewed, actions (if any) taken to resolve the problem, and whether and how the problem was resolved. Also include any findings of violation in **Case Summary and Recommendations** section.

SUMMARY OF PROBLEMS, ACTIONS TAKEN AND RESOLUTION **(Add additional sheets as an attachment to the SCER, if needed)**

PART D: CORPORATE MANAGEMENT EVALUATION (CMCE) NARRATIVE

(Only complete when conducting a CMCE)

When conducting a CMCE, this part of the SCER must be completed in addition to the Case Summary and Recommendations section; and Parts A, B and C. Compliance officers should use the Consolidated EEO-1 Report (Type 2) and Headquarters Report (Type 3) for completing the information related to corporate establishment representation.

This document must be attached to all CMCE SCERS. If using the Adobe format and the narrative extends beyond the space available on the form, then tab and file the document, and list the tab with the location in the space the question (*e.g.,* see Tab File 1-A – Hires). While this is a guide, all questions listed should be answered; however, you are not limited to only to the questions listed. See the FCCM, Chapter 4 and 41 CFR 60-2.30 for additional information.

Introduction:	Describe the corporate background, structure, observations concerning corporate culture and values. Also, describe any previous OFCCP reviews or complaints, or complaints filed with other agencies that specifically address management jobs or "glass ceiling" issues.
AAP Development:	Did the contractor develop and maintain an AAP at each facility (yes/no). If "no" explain how employees are accounted for in the contractor's AAPs?
Corporate AAP:	List the positions at lower-level establishments that are rolled-up into the Corporate AAP?
Scope:	Did the evaluation only cover the corporate headquarters? Yes/No If no because the evaluation was extended beyond the corporate headquarters to an intermediate headquarters or lower-level establishment, please explain the circumstances for the decision.
Focus Level and Areas:	Describe the company's pay and management structure.

Outreach Efforts:	Describe and assess the effectiveness of recruitment programs the company has in place at various levels. For upper-level management, do they use executive search firms or informal referrals from current executive level employees, or both? If executive search firms, what type? Were they informed of EEO/AA policy?
Jobs Filled at and above the Focus Level:	Describe the representation at the focus levels and during the evaluation period. Determine what jobs have been filled at the mid- and senior corporate management levels, and how were they filled (hire, promotion, transfer). Describe external and internal opportunities.
Internal Development - Specific Programs:	Does the company have development programs/opportunities for top management positions in the following areas and, if so, describe the participation (minorities, women, individuals with disabilities and protected veterans) in the programs: 1) Succession and Related Planning, 2) Performance Appraisals, 3) Visibility (Special Projects/Task Forces, Committees, Special Assistants/Executive Assistants), 4) Management Training and Executive Development Programs, and 5) Mentoring and Networking. Identify whether any of these programs/opportunities are designed for a particular group. During the review period, how many employees have gone through training and development programs? How many of those employees are males, females, various races, individuals with disabilities and/or protected veterans. How many have been promoted after completing the program? Describe the benefits of the program and the relationship to promotions. What happens if someone does not complete the program and their eligibility for future advancement? What is the contractor's policy and procedures on promotions, transfers and training opportunities?
Total Compensation:	Describe the compensation system, including any findings with regard to 1) Bonuses, 2) Stock, 3) Perks, and 4) Award and Honor Programs. What are the names of bonus/incentive plan(s)? Who is eligible? What are the criteria for eligibility, *e.g.,* length of service, minimum performance level, designation as a critical or high-potential employee? How is the final award determined, reviewed and approved?
Terminations:	Have there been any terminations among the mid- and senior level corporate management? What are the termination policies and practices? Are they evenhandedly applied?

APPENDIX A-2: STANDARD COMPLIANCE EVALUATION REPORT (SCER) INSTRUCTIONS

OVERALL SCER STRUCTURE

This SCER is used to document the results of a compliance evaluation, including the findings of the desk audit review of the contractor's Affirmative Action Programs (AAP).

How much of the SCER is completed during each particular desk audit or on-site review, or both, will depend on the type of evaluation being performed, the extent of investigation required and the data submitted by the contractor.

The SCER provides space for the compliance officer (CO) to enter narratives describing any problems identified, action(s) taken to resolve the problems, any finding(s) of violation, the evidence examined and the basis for the finding(s), and recommended corrective action.

The specific parts of the SCER are: Contractor Information, Case Summary and Recommendations: Part A: Preparation, Part B: Desk Audit, Part C: On-site Investigation, Part D: Corporate Management Compliance Evaluation (CMCE) Narrative.

INSTRUCTIONS

At the top of each page described below, there may be a "continued" box. Check it to indicate when additional pages have been inserted for the section.

CONTRACTOR INFORMATION

Item 1 – Establishment Name/Functional Unit, Address and Case Management System (CMS) Control #: Enter the name and address of the establishment or functional unit being reviewed. Also enter the CMS Control number assigned to this review.

Item 2 – Parent Name and Address: If the establishment or functional unit being reviewed is part of a larger firm, enter the name and address of the parent firm.

Item 3 – Complaints Investigated During Review: Enter the complaint number of each complaint you plan to investigate as part of the compliance evaluation, if any. At the end of the evaluation, check [□] those complaints that have been resolved. If, during the course of a compliance evaluation, a complaint arises and is investigated, that information will be noted here.

Item 4 – Contract Coverage: Indicate whether contract information is in CMS and if it covers the entire evaluation period. If the contract information is not in CMS or if you are conducting an on-site review and find more contracts, fill in the boxes with the following items: awarding agency, name of prime contractor if evaluation is being conducted of a subcontractor, the contract or purchase order number, dollar amount of the contract, and contract begin and end dates (or indicate if contract is indefinite). There are spaces for at least three contracts. More may be referenced on a separate page in the case file, if necessary.

Item 5 – Company Contacts and Outside Representation: List the name, title, phone number and e-mail address of the corporate and establishment Chief Executive Officer (CEO) (or other highest ranking executive), and the corporate and establishment contact persons for Equal Employment Opportunity and Affirmative Action (EEO and AA) matters. Also list the name, e-mail address and phone number of the outside representative (*e.g.,* attorney), if applicable.

Item 6 – Background Information: To the degree known, this item will include, but not be limited to, type of industry (*e.g.,* construction materials) and specific facility function (*e.g.,* manufacturing A-frames).

Item 7 – Compliance Evaluation Information: This item contains basic information pertinent to the start of a compliance evaluation. First, indicate if the evaluation is a Functional Affirmative Action Program (FAAP) review, Focused Review or CMCE. Then, fill in the charts with the requested information regarding important dates, whether the contractor is unionized and the North American Industrial Classification System (NAICS) code. After that, enter the geographic area in which the establishment or functional unit is located or, if it is not in a Metropolitan Statistical Area (MSA), enter the name of the appropriate labor area in which it is located. Then, enter the percent of the labor force within the named geographic area that is female and the percent that is minority (in the aggregate and by each minority group listed).

Charts are also provided for the CO to enter the contractor's workforce data, total and percentage, by race/ethnicity, veteran status and disability status. The charts allow for a rough sketch of the workforce composition for COs at the beginning of the compliance evaluation. They are not intended to replace the other analyses conducted during the compliance evaluation. To populate the charts, use data from AAP sources, such as the Executive Order 11246 organizational profile, VETS-4212 database and Section 503 utilization analysis. The data source(s) you choose should be noted on the SCER.

CASE SUMMARY AND RECOMMENDATIONS

After the evaluation has been completed, provide a brief summary of the findings to include: all unresolved violations and the recommendations for corrective action. For findings of violation, include for each violation: the time period of the violation; applicable law and regulation; evidence obtained, reviewed and the analyses conducted; and recommended corrective action(s) and the documents that will be prepared (*e.g.,* Notice of Violation(s), and Conciliation Agreement (CA)). If there is no finding of a violation and a closure letter is to be issued, provide a brief description of the basis for this recommended action.

On-site Box: The CO will indicate whether an on-site occurred and, if so, the reason for the on-site.

Early Resolution Procedures Box: The CO will check "yes" if the contractor engaged in early resolution procedures.

Signature Blocks: The CO must sign and date the report in the space provided. Upon approval of the report, the Assistant District Director and District Director must also sign and date it.

PART A: PREPARATION: Past Problems, Known Complaints or Enforcement Proceedings, and Collaboration with Other Agencies

1. Past Problems: Determine whether this establishment, or functional or business unit, has been subject to past compliance evaluations or OFCCP complaint investigations. If there have been no prior evaluations or complaint investigations, check the box at the top of the page and skip to item 2 (Known Complaints or Enforcement Proceedings). If a CA was issued in previous evaluations or investigations, attach a copy. In addition, complete this Part with the following information:

    a. Past Problems – Give the date of any past compliance evaluation or complaint investigation and list any major problems identified (*e.g.,* recordkeeping, etc.).

    b. Recurrence – At whatever point in the evaluation you have evidence that a past problem has recurred, describe the problem and evidence of recurrence. If you find that it did not recur, note "no" in this space.

2. Known Complaints/Enforcement Proceedings: Review responses received from other agencies on any complaints filed or ongoing enforcement proceedings against this establishment. If there are no such pending complaints or ongoing enforcement proceedings, state this and no further entries are needed in this part. If there are such complaints or proceedings, complete this Part as follows:

    a. List Known Complaints or Enforcement Proceedings – For each complaint or enforcement proceeding, indicate with what agency it was filed, its basis (including whether it is an individual or class complaint), issue, current status and the part of the workforce or establishment department it appears to concern (*e.g.,* clerical, professional, entry-level blue-collar, etc.).

    b. Related Problem Not Investigated in Known Complaint or Enforcement Proceeding – As you review the responses from the agencies, be alert for any indications of potential systemic discrimination or individual disparate treatment problems (*e.g.,* discrimination based on sexual orientation or gender identity) that should be investigated. Note those here.

3. Collaboration or Referrals to other Agencies (*e.g.,* EEOC, WHD or OSHA): If collaboration occurred during the investigation, list agency and basis for collaboration, and describe the issue and collaboration. If a referral was made to another agency, list agency, basis for referral the issue and the part of the workforce or establishment department it appears to concern.

PART B: DESK AUDIT

<u>I. INITIAL REVIEW OF AAPS AND SUPPORT DATA SUBMISSIONS</u>

Complete this section once you have received and reviewed the contractor's initial

AAP and support data submissions, following instructions in the Federal Contract Compliance Manual. Complete this section as follows:

Included: Review the Executive Order, Section 503 and VEVRAA AAP(s), as applicable, and the itemized listing data for each, to ensure that all required elements are present (complete). Beside each item, enter a "Y" for "yes" if it is included, or an "N" for "no" if it is missing.

Acceptable: Beside each listed element, enter a "Y" or "N" to indicate whether the AAP components and support data are acceptable. This determination of acceptability is limited to the evaluation that COs can conduct during the desk audit. If any item is not acceptable, list it in Part B. II of the SCER and describe the specific problem and actions taken. For compensation data, ensure that the data includes all employees, including, but not limited to, full-time, part-time, contract, per diem or day labor, and temporary employees, as of the date of the organizational display or workforce analysis (*i.e.*, the organizational profile).

II. SUMMARY OF AAP ACCEPTABILITY

The CO must provide a detailed explanation of each AAP and support data problem. Each problem area must be described separately. If the problem is not resolved at the desk audit and on-site verification of compliance is necessary, the on-site box must be checked. The AAP and Supporting Data Problems description should include:

Problem: Provide a brief description of the identified problem and whether the problem concerns the Executive Order 11246, Section 503, VEVRAA AAPs, or support data.

Action Taken: The steps that were taken to resolve the problem, or the steps that will be taken (Plan to Resolve) if the action is to take place during or after an on-site review.

Findings: Indicate whether problems were identified based on an off-site analysis or whether an on-site review was conducted. Note any finding(s) and briefly describe the basis for the finding(s).

Resolution: If the problem is resolved, explain how it was resolved. If the problem is not resolved, the issue must be included in the Case Summary and Recommendations section of the SCER.

III. EEO-1 WORKFORCE AND TREND ANALYSIS

The purpose of this preparation is to identify whether there is a difference in the totals between the most recent EEO-1 report and AAP workforce totals to determine if more information and clarification is needed before proceeding to more complex analyses. If there is a difference, COs should look at personnel activity data to see if activities such as hires and terminations explain the difference. If not, clarification is needed from the contractor to ensure the entire workforce is included in the AAP and to ensure that all personnel activity has been reported.

The EEO Trend Analysis is to examine employment trends and patterns in the contractor's workforce. Specifically, the trend analysis identifies underrepresentations and concentrations of employees by EEO-1 category. Provide a narrative of the results of the trend analysis.

IV. EVALUATION OF GOOD FAITH EFFORTS – EXECUTIVE ORDER 11246

Identify goal areas where Executive Order 11246 goals were established but not met and indicate if an on-site investigation is needed. For each goal area that was not met, include the following:

Goal Area: Identify job group; indicate whether goals were for minorities, females or both; identify whether the goals were for the prior year (PY), the current year (CY) or both; and identify the expected goal and actual goal.

Explanation and Commitments: If there is a difference between the expected and actual goals, provide the contractor's explanation for the difference and pertinent AAP commitments.

Additional Information: Note any information that will be requested. If an on-site is needed to obtain the information or to address the problem, check the on-site box.

Findings: Indicate whether problems were identified based on an off-site analysis or whether an on-site review was conducted. Note any finding(s) and briefly describe the basis for the finding(s).

Resolution: If the problem is resolved, explain how it was resolved. If the problem is not resolved and remedial action must be taken, include a description of the recommended action in the Case Summary and Recommendations section of the SCER.

V. SECTION 503 UTILIZATION ANALYSIS AND OUTREACH ASSESSMENT

For the utilization analysis, identify whether the contractor established the seven percent utilization goal for each job group or, if fewer than 100 employees, for the entire workforce. Describe what steps were taken to determine whether impediments to equal opportunity exist, any problem areas identified, and the action-oriented programs designed to correct any problem areas. If further investigation is needed on site, indicate by checking the box. Also, provide an explanation of any findings, indicating whether the problem was resolved and what remedial action (s) was taken. For contractors more than six months into the current AAP year, indicate any progress it has made toward meeting the seven percent goal.

For the outreach assessment, review the AAP to determine if the contractor evaluated the effectiveness of each outreach and positive recruitment effort it undertook. Also, determine if the contractor drew a conclusion as to whether the totality of the efforts were effective in identifying and recruiting qualified individuals with disabilities. If so, indicate whether the contractor's conclusion was reasonable. If the conclusion was not reasonable, explain why not. Finally, list any additional information that you need to request from the contractor.

VI. VEVRAA OUTREACH ASSESSMENT

For the outreach assessment, review the AAP to determine if the contractor evaluated the effectiveness of each outreach and positive recruitment effort it undertook. Also, determine if the contractor drew a conclusion as to whether the totality of the efforts was effective in identifying and recruiting qualified veterans. If so, indicate whether the contractor's conclusion

was reasonable. If the conclusion was not reasonable, explain why not. Finally, list any additional information that you need to request from the contractor.

VII. EMPLOYMENT ACTIVITY DATA ANALYSES

In this section, the compliance officer describes any potential systemic or individual discrimination found during the desk audit. Using the employment activity data submitted by the contractor, discuss any indicators or relevant evidence uncovered at desk audit during the hiring analysis, termination analysis, promotion analysis and compensation analysis, and efforts to resolve the indicators before proceeding to an on-site investigation. Indicate whether an on-site investigation is needed to resolve any identified issues.

VIII. OTHER PROBLEMS FOR ON-SITE INVESTIGATION

Indicate any other problems that require additional information and/or an on-site review, such as pay secrecy policies found at desk audit, problems in minority and female representation, as applicable within departments/units, possible lines of progression (within department or across department lines), supervisory positions vs. those supervised, etc. Provide an explanation of any findings, indicating how the problem was resolved and what remedial action(s) was taken. For each identified problem include the following:

Problem Area: Provide a brief description of the identified problem.

Additional Information: Note any information requested. If an on-site was needed to obtain the information or to address the problem, check the on-site box.

Findings: Indicate whether problems were identified based on an off-site analysis or whether an on-site review was conducted. Note any finding(s) and briefly describe the basis for the finding(s).

Resolution: Provide an explanation of any findings, indicating how the problem was resolved and what remedial action(s) was taken. Indicators of discrimination are reported in Part B VII.

PART C: ON-SITE INVESTIGATION

I. IMPLEMENTATION: EQUAL OPPORTUNITY CLAUSE AND OTHER REQUIREMENTS UNDER EXECUTIVE ORDER 11246, SECTION 503, VEVRAA AND EXECUTIVE ORDER 13496

During the on-site review, evaluate whether the listed requirements under EO

11246, Section 503 and VEVRAA, and Executive Order 13496 have been met. For each of these elements, indicate whether the action was taken by the contractor and how this was evidenced (*e.g.,* identify or summarize the CO's observation, review of the documentation and interview statements that are responsive) and whether any problems exist. If problems exist, indicate how the problems were resolved. If any requirements are not met despite attempts to resolve the problem, include the violation requiring corrective action in the Case Summary and Recommendations section.

II. IMPLEMENTATION OF REGULATIONS PROHIBITING DISCRIMINATION ON THE BASIS OF SEX

During the on-site review, verify the contractor's implementation of the regulations prohibiting discrimination on the basis of sex. For each of the specified elements, indicate what action was taken by the contractor and how this was evidenced (*e.g.,* identify or summarize the documentation and interview statements that are responsive), and whether any problems exist. If problems exist, indicate how the problems were resolved. If there is a potential finding of discrimination, the information must be included in Part C IV of the SCER.

III. IMPLEMENTATION AND GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION OR NATIONAL ORIGIN

During the on-site review, verify the contractor's implementation of the guidelines on discrimination based on religion and national origin. For each of the specified elements, indicate what action was taken by the contractor and how this was evidenced (*e.g.,* identify or summarize the documentation and interview statements that are responsive), and whether any problems exist. If problems exist, indicate how the problems were resolved. If there is a potential finding of discrimination, the information must be included in Part C IV of the SCER.

IV. INVESTIGATING POTENTIAL DISCRIMINATION IDENTIFIED DURING DESK AUDIT

Record all identified potential areas of discrimination that have been resolved or that require corrective action in order to be resolved. Include a description of the potential discrimination identified, actions taken to resolve the problem (if any) and whether the problem was resolved. If the problem was not resolved and will require corrective action, the problem must be included in the Case Summary and Recommendations section of the SCER.

V. PROBLEMS IDENTIFIED DURING THE ON-SITE INVESTIGATION

Record investigative findings for any problems discovered during the on-site investigation that were not previously identified during the desk audit (*e.g.,* anecdotal evidence describing discrimination or harassment against employees based on disability, protected veterans' status, sexual orientation or gender identity, or suggesting that the contractor prohibits employees from discussing their pay). Include a discussion of the nature of the problem, relevant evidence collected and reviewed, actions (if any) taken to resolve the problem, and whether and how the problem was resolved.

PART D: CMCE NARRATIVE

When conducting a CMCE, this part must be completed in addition to completing all other parts of the SCER. Supplement the Case Summary and Recommendations section with findings specific to a CMCE. For additional information regarding CMCEs, see Chapter 4 of the Federal Contract Compliance Manual.

APPENDIX A-3: INDEX FOR A SUPPLY AND SERVICE REVIEW

Remember to Index and Tab the Materials.

File 1: SCER and Data pertaining to SCER Findings: This file contains the SCER and data pertaining to the findings. This includes worksheets, interviews, contractor records, etc., pertinent to issues investigated. Include all relevant material bearing either for or against the conclusions reached. Cross reference other files, as applicable, for example: collective bargaining agreement in File 3.

Right Side of Folder

- SCER
- Worksheets
- Supporting documents
- Interviews
- Etc.

Left Side of Folder

- Form CC-100
- Extension requests and responses
- Contractor research form and supporting jurisdiction information

File 2: Case Chronology, Correspondence and Meeting Notes: This file will contain all correspondence, including attachments submitted and meeting notes. Correspondence includes any material resulting from contacts with the contractor, union, attorneys, consultants, Congress persons and memos to file (not investigative notes). The closure document will be tabbed. Note that a copy of the closure document is also placed in File 6.

Right Side: Correspondence – The correspondence must be in reverse chronological order (latest correspondence on top). As applicable, cross reference other files.

Left Side: Case Chronology Log – CC-53 (in chronological order and legible).

File 3: Employee Handbooks, Collective Bargaining Agreement and Miscellaneous: This file will contain a copy of any employee handbooks, collective bargaining agreements, fringe benefit information, leave policy booklets, applications, personnel records and any other similar contractor documents. Any documents that do not fit the description of materials to be included in any other file will be placed here.

File 4: SOL Opinions, JRC Memoranda and Post-SCER Update: This file will contain any Solicitor's (SOL) opinions and Joint Review Committee (JRC) memoranda associated with this review.

Also include in this file any material generated after the CO submits the review, for example: transmittal memoranda, additional conciliation efforts, etc. These materials are other than progress reports (File 5).

File 5: Progress Reports: This file will contain:

Right Side: Any progress reports submitted under a conciliation agreement or consent decree, or other court order, and OFCCP's evaluation of the report and the summary of the reports submitted.

File 6: Historical Review Results: This file will contain a copy of any available closure letters and documents generated by reviews of this establishment, and a copy of the closure letter or document for the current review. If reports are required under the conciliation agreement (CA), this file will also contain a copy of the Summary of Progress Reports.

NOTE: The historical file will be retained in the area office (AO) or district office (DO) pursuant to the agency's records management schedule. If another review of this establishment is scheduled before this case file is retired, the historical file will be pulled from the old case file and moved to the new file. If another review has not been scheduled, the historical file will be pulled and retained in the AO or DO when the rest of the case is retired.

File 7: AAP and Itemized Support Data: This file will contain the contractor's AAP (s) (Affirmative Action Program) and AAP support data evaluated in this review (including the EEO-1 Reports)

APPENDIX A-4: SAMPLE ON-SITE REVIEW PLAN

PAGE INTENTIONALLY LEFT BLANK

APPENDIX A-5: INDEX FOR A CONSTRUCTION REVIEW

PAGE INTENTIONALLY LEFT BLANK

APPENDIX A-6: STANDARD COMPLIANCE EVALUATION REPORT (CONSTRUCTION)

PAGE INTENTIONALLY LEFT BLANK

APPENDIX A-7: SPECIAL REMEDIAL CONSIDERATIONS APPLICABLE TO STOCK

(Reference Section 4I00(b))

When there is a finding of discrimination in the awarding of stock or stock options, the following considerations apply to remedy.

I. STOCK AWARDS - VESTED

When the discrimination was in the awarding of vested stock and the vesting date has not yet occurred, the victim is simply awarded the number of shares he or she would have received, absent discrimination, with the same vesting date as other stock recipients.

> Example: Absent discrimination, on June 1, 2021, the victim would have received 100 shares of stock with a vesting period of three years. The remedy would be to immediately award the victim 100 shares of stock with a vesting date of June 1, 2021.

Where the vesting date has passed, the remedy will be calculated as indicated in II below, with the vesting date considered the date the victim would have received the stock, absent discrimination.

II. STOCK AWARDS - ONE-TIME BONUS

1. Shares of Stock:

   a. Establish the number of shares (or additional number of shares) the discriminatee would have received, absent discrimination, and the date(s) he or she would have received them.

   b. Find the dollar value of that number of shares as of the date, absent discrimination, the discriminatee would have the shares and the current dollar value. Take the higher of the two figures, expressed as the number of current shares.

   Example: Absent discrimination, the discriminatee would have received 100 additional shares of stock. On the date he or she should have received the stock, the share price was $20, for a total dollar value of $2,000.

   Scenario A: The stock has gone down to $10 a share, so the 100 shares are now worth only $1,000. The discriminatee should receive $2,000 worth of stock at the current price; *i.e.*, 200 shares of stock.

   Scenario B: The stock has gone up to $30 per share, so the 100 shares are now worth $3,000. The discriminatee should receive 100 shares at the current price.

2. Dividends:

a. Determine the dollar amount of stock dividends (or additional stock dividends) the discriminatee would have received, absent discrimination, and add simple interest (see Appendix 7A).

Example: Determine the dollar amount of dividends that would have been paid on the 100 shares of stock from the date the discriminatee should have received the stock to present and add simple interest.

III. STOCK OPTIONS

When the discrimination was in the awarding of stock options, the remedy will include awarding the discriminatee the number of stock options he or she would have received, absent discrimination. The period of time he or she would have had to exercise those options will be calculated from the date he or she actually receives the options.

Example: On January 1, 2018, absent discrimination, the victim would have received an option to buy 100 shares of stock at any time over the following four years. If settlement occurred on October 1, 2018, the victim would be able to exercise an option on the 100 shares of stock up until October 1, 2022.

CO's should consult with the national office for specific help and guidance on stock valuation.

APPENDIX A-8: INDEX FOR A COMPLAINT FILE

Remember to Index and Tab the Materials.

File 1: Complaint and Data Submitted by Complainant: This file contains any information submitted by the complainant, including the envelope. Materials include:

Right Side of Folder

- Complaint Form (CC-4) or letter of allegations
- Complainant's witness list
- Documents provided to support the allegation
- Interview of Complainant

Left Side of Folder

- CMS forms associated with the investigation
- Extension requests and responses

File 2: Case Chronology, Correspondence and Meeting Notes: This file will contain all correspondence (e.g. letters and emails), including attachments submitted and meeting notes. Correspondence includes any material resulting from contacts with the contractor, union, witnesses, consultants and memos to file (not investigative notes).

Right Side: Correspondence – The correspondence must be placed in reverse chronological order (latest correspondence on top). As applicable, cross reference other files.

Left Side: Case Chronology Log – CC-53 (in chronological order and legible).

File 3: Investigative Material: This file will contain all investigative material pertaining to complaint findings. Such data may include:

- The Investigative Plan
- The Investigative Report (on top)
- Interview (witness) statements
- Investigative notes
- Applications
- Personnel records
- Statistical evidence
- Comparative evidence
- Anecdotal evidence

File 4: Medical/Veterans Documentation: This file will contain any medical/veterans documentation, only if applicable. Such data may include:

- Medical release
- Medical and disabled veteran status (e.g. DD-214)

- Medical coverage information
- Diagnosis or medical description of disabling condition
- Work restrictions
- For veterans, other coverage information, as needed (e.g. Armed Forces campaign badge information)

File 5: Legal: This file will contain any documents related to legal activity including:

- Notice of Results Investigation (NORI) (on top unless there is a Conciliation Agreement)
- Conciliation Agreements (on top if completed)
- Solicitor's opinions
- Joint Review Committee meeting notes and/or report
- Freedom of Information Act and Privacy Act determinations
- Enforcement recommendations
- Jurisdictional and contract coverage information (on the bottom)

File 6: Employee Handbooks, Collective Bargaining Agreement and Miscellaneous: On the right side, this file will contain copies of any employee handbooks, collective bargaining agreements, fringe benefit information, leave policy booklets and any other similar contractor documents. Any documents that do not fit the description of materials to be included in any other file will be placed here.

File 7: Historical Review Results: This file will contain copies of any available closure letters and documents generated during previous complaint investigations of this establishment. The closure letter for the current investigation will also be included here.

APPENDIX A-9: RETALIATION AND INTERFERENCE: COMPLAINT PROCESSING OUTLINE AND CHECKLIST

The OFCCP regulations implementing Executive Order 11246, Section 503 and VEVRAA, titled "Intimidation and Interference"[427] state that a contractor "shall not harass, intimidate, threaten, coerce or discriminate against any individual because the individual has engaged in or may engage in" a protected activity. This not only encompasses protection against retaliation but it also provides protection against intimidation and interference that may not give rise to a retaliation claim. As such, examine complaint allegations to determine whether Title VII principles regarding retaliation claims apply or the broader protection of OFCCP's regulations against intimidation and interference is applicable.

Additionally, there is a difference in available remedies. Compensatory and punitive damages are not available under the laws OFCCP enforces but may be under Title VII and the ADA. Complaints filed with OFCCP that could also be brought under Title VII or the ADA, as enforced by EEOC, are dual filed for the purpose of complaint processing.

A. RETALIATION

When assessing possible retaliation under Executive Order 11246, Section 503 and VEVRAA, OFCCP applies the same concepts, standards and analyses as EEOC. There are three essential elements of a retaliation claim: protected activity (opposition to discrimination or participation in the filing or investigation of a complaint, compliance evaluation, hearing or other activity), materially adverse action taken by the contractor, and causal connection between the protected activity and the materially adverse action. Each of these three elements is discussed below.

1. Protected Activity (participation in an EEO process or opposition to discrimination)

a. Did the Complainant oppose discrimination?

- Did the Complainant explicitly or implicitly communicate to the contractor or another covered entity a belief that its activity constituted unlawful discrimination under E.O. 11246, Section 503 or VEVRAA?
- If the protest was broad or ambiguous, would the complainant's protest reasonably have been interpreted as opposition to such unlawful discrimination?
- Did someone closely related to, or associated with, the Complainant oppose discrimination?

b. Was the manner of opposition reasonable? Or was the manner of opposition done in so disruptive or excessive a manner as to be unreasonable?

[427] 41 CFR 60-1.32; 60-300.69; and 60-741.69.

- If the manner of opposition was not reasonable, the complainant is not protected under the anti-retaliation clauses.

c. Did the Complainant have a reasonable good faith belief that the opposed practice violated the anti-discrimination laws or could do so if repeated?

- If so, the complainant is protected against retaliation, even if he or she was mistaken about the unlawfulness of the challenged practices.

- If not, the complainant is not protected under the anti-retaliation clauses.

d. Did the Complainant participate in the complaint process or did the Complainant or someone closely related to or associated with the Complainant file a charge, or testify, assist, or participate in any manner in an investigation, proceeding, hearing, or lawsuit under the laws enforced by OFCCP?

- If so, the Complainant is protected against retaliation regardless of the validity or reasonableness of the original allegation of discrimination.

- The Complainant is protected against retaliation by a contractor for participating in the complaint process or other proceedings under the laws enforced by OFCCP even if that complaint involved a different contractor.

2. Materially Adverse Action

a. Did the contractor subject the Complainant to any kind of adverse treatment?

- Adverse actions undertaken after the Complainant's employment relationship with the contractor ended, such as negative job references, can be challenged.

- Although trivial annoyances are not actionable, more significant retaliatory treatment that is reasonably likely to deter protected activity is unlawful. There is no requirement that the adverse action affect the terms, conditions or privileges of employment.

3. Causal Connection

The causation standard requires the evidence to show that “but for” a retaliatory motive, the contractor would not have taken the adverse action. The but-for causation standard does not require retaliation to be the sole cause of the action. There can be multiple but-for causes and retaliation need be only one of the but-for causes of the materially adverse action in order to establish unlawful retaliation.

a. Is there direct evidence that retaliation was a but-for cause of the adverse action?

i. Did the company official admit that it undertook the adverse action because of the protected activity?

ii. Did the company official express bias against the Complainant based on the protected activity? If so, is there evidence linking that statement of bias to the adverse action?

- Such a link would be established if, for example, the statement was made by the decision-maker at the time of the challenged action.

b. Is there circumstantial evidence that retaliation was a but-for cause of the adverse action?

c. Is there evidence raising an inference that retaliation was a but-for cause of the adverse action?

- Such an inference is raised, for example, if the adverse action took place shortly after the protected activity, as long as the decision-maker was aware of the protected activity before undertaking the adverse action.

- If there was a long period of time between the protected activity and the adverse action, determine whether there is other evidence raising an inference that a but-for cause of the adverse action was retaliation.

d. Has the contractor produced evidence of a legitimate reason for the adverse action unrelated to the protected activity?

e. Is the contractor's explanation a pretext designed to hide retaliation?

- Did the contractor treat similarly situated employees who did not engage in protected activity differently from the Complainant?

- Did the contractor subject the Complainant to heightened scrutiny after he or she engaged in protected activity?

- If, on the basis of all of the evidence, the CO is persuaded that retaliation was for a but-for cause of the adverse action, then "cause" must be found.

f. OFCCP must be able to show that the contractor would not have taken the same action, absent its retaliatory motive. If it cannot demonstrate that, then causation has not been established.

B. SPECIAL REMEDIES ISSUES

a. Is it appropriate to seek temporary or preliminary relief pending final disposition of the complaint?

b. Is there a substantial likelihood that the challenged action will be found to constitute unlawful retaliation?

c. Will the retaliation cause irreparable harm to the Complainant and/or the OFCCP?

- Will the Complainant likely incur irreparable harm beyond financial hardship because of the retaliation?

- If the retaliation appears to be based on the Complainant's filing of a prior EEO complaint, will that retaliation likely cause irreparable harm to OFCCP's ability to investigate the Complainant's original complaint of discrimination?

- If there is a substantial likelihood that the challenged action will constitute retaliation and that retaliation will cause irreparable harm to the Complainant or the OFCCP, or both, contact the Regional Solicitor's (RSOL) office to ask about pursuing temporary or preliminary relief.

d. If the complaint is dually filed under Title VII or the ADA (or both), consult your RSOL to help determine whether compensatory and punitive damages are available and appropriate.

- Compensatory and punitive damages may be available for retaliation claims under all of the statutes enforced by the EEOC.

APPENDIX A-10: INVESTIGATIVE REPORT

(Name of complainant) v. (CMS #)

(Name of contractor)

1. **Basis:** Insert one or more as appropriate: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended.
2. **Contractor:** Insert the company name and address, the name of contractor's representative and that individual's contact telephone number.
3. **Contract Coverage:** Insert the contract number, agency name, date of award, duration of contract period, and place of performance, and attach copy of the contract.
4. **On-site Investigation:** Insert the date or dates.

For Each Allegation:

5. **Allegation(s):** Provide a statement of the allegation(s) under OFCCP's authority based on what the complainant alleged happened to him/her. Include the circumstances of the action as the complainant expressed them in the complaint and in the interview.
6. **Issue(s):** Identify the alleged discriminatory action(s) which gave rise to the complaint and the applicable regulatory citations.
7. **Rebuttal:** Include the contractor's explanation of what happened and why it happened, including the circumstances of the action.

8. **Findings of Fact:**
   a. Provide a description of contractor's relevant personnel policies and practices, and relevant union rules. Reference case file location of copies;
   b. Provide the results of review of documentary evidence and records. Reference case file location of copies;
   c. Summarize the relevant facts obtained from interviews of contractor officials. Reference case file location of interview notes; and
   d. Summarize the relevant facts obtained from interviews of other witnesses. Reference the case file location of interview notes.

9. **Analysis:** Provide an explanation of how and why the findings of fact confirm or refute the allegations.
10. **Conclusion:** Insert a statement as to whether the contractor has or has not committed a violation. Include a citation to the appropriate regulation.
11. **Remedy:** Use this section when a violation by the contractor is found to:
    a. Describe all the remedies the complainant should receive; and
    b. Describe the corrective actions the contractor must take regarding its policies and practices.

APPENDIX A-11: INFORMATION RELATED TO FILING SUIT UNDER TITLE VII OF THE CIVIL RIGHTS ACT, TITLE I OF THE ADA AND THE EQUAL PAY ACT

This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.

PRIVATE SUIT RIGHTS – Title VII of the Civil Rights Act of 1964, as amended (Title VII) or the Americans with Disabilities Act of 1990, as amended (ADA)

In order to pursue this matter further, you must file a lawsuit against the contractor(s) named in the complaint you submitted to the Office of Federal Contract Compliance Programs (OFCCP) **within 90 days of the date you receive the Notice of Right to Sue.** Once this 90-day period is over, your right to sue based on the complaint covered by this Notice of Right to Sue will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice of Right to Sue.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing the Notice of Right to Sue is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in your complaint to OFCCP or, to the extent permitted by court decisions, matters like or related to the matters alleged in your complaint to OFCCP. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the contractor has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS – Equal Pay Act (EPA)

EPA suits must be filed in court within two years (three years for willful violations) of the alleged EPA underpayment; back pay due for violations that occurred **more than two years (three years for willful violations) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from July 1, 2016 to December 1, 2016, you should file suit before July 1, 2018 (not December 1, 2018) in order to recover unpaid wages due for July 2016. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII or the ADA referred to above. Therefore, if you also plan to sue under Title VII or the ADA, in addition to suing on the EPA claim, your suit must be filed within 90 days of the Notice of Right to Sue and within the two or three year EPA back pay recovery period.

ATTORNEY REPRESENTATION – Title VII and the ADA

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do *not* relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND ASSISTANCE – All Statutes

If you have any questions about your legal rights, including advice on which U.S. District Court can hear your case, you may contact an OFCCP representative at [*insert the name and phone number of OFCCP district or area office that investigated complaint*], who will coordinate with the Equal Employment Opportunity Commission (EEOC) to promptly obtain that information for you. If you need help in finding a lawyer, we recommend contacting the bar association in your state and an OFCCP representative can also assist you with that in coordination with EEOC. If you need to inspect or obtain a copy of information in OFCCP's file on your complaint, please request it promptly in writing and provide the OFCCP complaint number (as shown on your Notice of Right to Sue). If you file suit and want to review the OFCCP complaint file, **please make your review request within six months of the Notice of Right to Sue.** (Before filing suit, any request should be made within the next 90 days.)

If you file suit, please send a copy of your Court complaint to [*insert the name and address of EEOC office to which a copy of the dually filed complaint was sent, and which was notified of issuance of Notice of Right-to-Sue*].

APPENDIX A-12: "MACMILLAN" FACTORS CONCERNING SUCCESSOR EMPLOYER LIABILITY

Requests for a determination of successor liability should include responses to the factors listed below. Responses should cite the source of the information and, where the source is written material, a copy of the relevant page(s) should be attached. Information on these factors may be obtained from a number of sources, including the contractor, Standard and Poor's and other corporate guides, trade magazines, annual reports, collective bargaining agreements and the business section of local newspapers.

1. Whether the Successor Company had Notice of the Charge.

   The date the alleged discriminatory act occurred, the date the complaint was filed and the dates concerning the transfer (announcement date, effective date of merger, acquisition, etc.).

2. The Ability of the Predecessor to Provide Relief.

   Whether the predecessor continues to operate, and the extent and location of its new operations; whether the predecessor maintained any of its assets (what percentage and type); whether the transfer resulted from a bankruptcy action; and whether the predecessor could provide seniority, reinstatement, hiring, back pay, etc.

3. Whether there has been a Substantial Continuity of Business Operations.

   The percentage of operating assets that were transferred to the successor; the status of the predecessor's patents, trademarks and operating name; whether there are corporate officers and members of the board of directors who are common to both the predecessor and the successor, etc.

4. Whether the Successor Uses the Same Plant.

5. Whether the Successor Uses the Same or Substantially the Same Workforce.

6. Whether the Successor Uses the Same or Substantially the Same Supervisory Personnel.

7. Whether the Same Jobs Exist Under Substantially the Same Working Conditions.

   Whether the organization of the departments, sections, etc., remain substantially the same; the percentage of old jobs maintained; whether personnel practices are substantially the same; and the status of any collective bargaining agreements, etc.

8. Whether the Successor Uses the Same Machinery, Equipment and Methods of Production.

9. Whether the Successor Produces the Same Product.

APPENDIX A-13: TRANSMITTAL MEMORANDUM FOR AN ENFORCEMENT RECOMMENDATION

(Compliance Evaluations)

The memorandum transmitting a recommendation for enforcement arising from a compliance review will contain the following sections:

1. CONTRACTOR'S IDENTITY

   a. State the establishment's or functional unit's full name and mailing address, including the county in which it is located, and the names and titles of primary establishment, construction or functional unit contact persons (*i.e.*, top establishment or functional unit official, legal representative, EEO and Affirmative Action Coordinator).

   b. If the establishment or functional unit is part of a multi-establishment corporation, also state the corporate name and address, the names and titles of primary contact persons (as above), and describe the relationship between the establishment/functional unit and corporation, *e.g.,* unincorporated division or wholly owned subsidiary. The description of this relationship is critical when the establishment/functional unit itself does not hold a federal contract.

   c. Give any known information on the ownership makeup of the business and its legal address in the state in which it is incorporated. This information is often available in industrial directories and databases or from the Secretary of State's office (corporations).

2. CONTRACTOR'S BUSINESS

   Describe the contractor's main product(s), basic structure, total employment and major types of jobs.

3. PRIOR HISTORY

   Indicate whether and when the establishment or functional unit, or both, were previously reviewed or subjected to an OFCCP complaint investigation. Also note the outcome of any such review or investigation. Reference any relevant legal actions against the establishment or functional unit, or both (*e.g.,* pending Title VII suit, consent decree, etc.).

4. CONTRACT COVERAGE

   Describe the basis for OFCCP jurisdiction. For basic coverage requirements, under the Executive Order (EO) 11246, see 41 CFR 60-1.5(a); under Section 503, see 41 CFR 60-741.4; and under VEVRAA, see 41 CFR 300.4. If a violation asserted relates to a written AAP, for Executive Order 11246, see 41 CFR 60-2.1 (supply and service) and 41 CFR 60-4.1 (construction); for Section 503, see 41 CFR 60-741.40(b); and for VEVRAA, see 41 CFR 60-300-.40(a).

As used below, the term federal contracts means federal prime contracts, subcontracts and federally assisted construction contracts and subcontracts.

a. Basic Contract Information (All Cases): List here (or in an attachment if voluminous) all known federal contracts held by the contractor during the review period and continuing to the present. For each such contract, give the information requested on page 2, item 5 of the Supply and Service SCER plus the goods, services, lease arrangements, etc. provided under the contract and any available information on whether there was a break or modification during the period the contract was in effect.

b. If coverage is based on contracts for indefinite quantities (for example, a blanket purchase order, a rate agreement, etc.) note: (1) the amounts ordered in each business year during the review period and continuing to the present, and (2) the identity and location of contracting officers and others who may be able to provide copies of invoices and other documents verifying coverage.

c. Additional Contract Information Where Actual or Potential Coverage Dispute: If coverage is or is anticipated to become an issue, state the grounds on which the contractor claims not to be covered, and any grounds you believe the contractor might assert. Then analyze the claim asserted and/or any potential claim. If you have questions or need assistance, consult with your Regional Solicitor (RSOL).

   i. Separate Entity Issue: If the contractor claims to be or not to be covered based on the fact it is a separate entity from the company holding the federal contract, it is critical to include information on the following factors concerning the relationship – whether:

      - The entities have common ownership;
      - The entities have common directors and/or officers;
      - One entity has de facto day-to-day control over the other through policies, management or supervision of the entity's operations;
      - The personnel policies of the entities emanate from a common or centralized source; and
      - The operations of the entities are dependent on each other, *e.g.,* services are provided principally for the benefit of one entity by another and/or both entities share management, offices or other services.

   ii. Subcontract Issue: If coverage is based on a subcontract relationship with a prime government contractor, include:

      - The identity of the prime contractor, including the contracting agency and the goods or services involved in the prime contract;
      - Information demonstrating that the prime contractor is covered; and

- An analysis of how the subcontract meets at least one of the two prongs of the regulatory definition of covered subcontract.

iii. Serious Jurisdictional Question: If a serious question about jurisdiction is present or anticipated, obtain a complete copy of at least one contract which establishes coverage for the review period and continuing to the present from the contracting agency or the contractor. RSOL will not approve an enforcement recommendation without this documentation. A copy of the contract(s) establishing coverage must be included in the case file.

5. SUMMARY OF EVENTS

Indicate how the company was selected for review, and then list major review events, including current status. Major events include, for example, the date the AAP was received; the dates of the on-site; the dates of any Predetermination Notice, Notice of Violation, Show Cause Notice and 15-Day Notice; the period during which conciliation was attempted; and the date conciliation was terminated. In the case of a denial of access claim, OFCCP must show that the contractor was selected in accordance with a neutral plan.

6. LIST OF VIOLATIONS FOR WHICH ENFORCEMENT IS SOUGHT

List each violation for which enforcement is being sought under the subheadings of "Affirmative Action" or "Discrimination."

7. ANALYSIS OF VIOLATIONS

For each violation for which enforcement is sought, give the following analysis, specifically referring to the case file location by file and page number of the relevant portions of documents and interviews.

Note, however, that violations may be grouped in such a way as to result in a clearer and more succinct presentation of the case. For example, many affirmative action violations are interrelated and can more easily be described together, *e.g.,* problems with job group formation usually result in problems with utilization analysis, underutilization determinations and goals.

a. Violation: State the practice or action that constitutes the violation and identify the sections of the regulations and/or laws violated. In the case of a systemic discrimination finding, state the specific group affected, job(s) at issue, level of disparity in standard deviations, if there is relevant statistical data, and any relevant shortfall. Also, in appropriate cases, identify the component(s) of the selection process that caused the adverse impact.

b. Facts: Summarize factual findings. Reference the file and page location of data such as worksheets, statistical analyses, cohort analyses, salary analyses, medical evidence and contractor documents which are the basis for each factual finding.

c. Analysis: Conduct an analysis to determine why the facts lead to a conclusion of violation. Where discrimination is the issue, analysis should be done using the appropriate theory and burden of proof.

   Review the contractor's position and any data provided in support of its position (referencing file location), giving the reasons (referencing supporting documentation) for concluding that the contractor has not adequately responded to evidence of violation and/or that its position is a pretext for discrimination. Also determine if there are other contractor positions that could be raised in the future, and the overall strengths and weaknesses of the case.

d. Remedy: Describe the proposed remedy. Indicate the basis and support for the type of remedy proposed. Describe the contractor's position on remedy if this has been discussed with the contractor.

   i. Individually-based back pay: If a proposed remedy includes individually-based back pay, indicate the pay rate used (and, if from other than payroll records, its source), the method of computation and applicable interest rates. Include or attach a summary list of back pay due with the name of each affected class member, the period covered and amount due (referencing the file location of individual computation sheets).

   ii. Formula relief: If a proposed remedy includes a formula for relief, indicate the rationale for a formula approach, the basis for calculating the total amount due, including components of the calculations, and the method of allocating the total amount among class members.

e. SOL, JRC, RO and NO Opinions: If applicable, reference the tabbed file location of and summarize any Solicitor's, Joint Review Committee, regional and national office opinions and recommendations, and the action taken with respect to them.

8. CONCILIATION

Describe the conciliation efforts undertaken. Describe significant aspects of those efforts, *e.g.,* what was offered, by whom, rationale for rejecting and issues at impasse. Identify dates conciliation was attempted, the participant(s) and summarize the results, referencing the file location of meeting notes, pertinent correspondence, etc.

If, however, there has already been some discussion of conciliation with respect to particular violations earlier in the Transmittal Memorandum, (*e.g.,* the contractor's position on the violation/remedy, etc.), that discussion may be referenced in the memorandum section on conciliation efforts.

IMPORTANT: If conciliation sessions continue after the Transmittal Memorandum is prepared, it is critical that, at a minimum, an addendum be attached updating the status of negotiations (including any additional violations resolved (see item 10 below) and referencing the file location of pertinent meeting notes and correspondence. RSOL must receive all correspondence and other documents generated during these negotiations and be included in all settlement negotiations.

9. CONCLUSIONS/RECOMMENDATIONS

   Indicate the action being recommended.

10. ATTACHMENT – VIOLATIONS FORMALLY CITED BUT RESOLVED

    In an Attachment to the Transmittal Memorandum, list any violations cited in one or more of the following documents that have been resolved as of the date the Transmittal Memorandum is prepared: Predetermination Notice, Notice of Violation, Show Cause Notice, Amended Show Cause Notice and 15-Day Notice.

    Briefly describe the resolution, referencing the file location of documents that provide more information on the issue and its resolution.

CONTACT PERSONNEL

List the contacts for the contractor and OFCCP.

Figures 1 –6

Figure Number	Figure Title
F-1	Compliance Check Control Sheet
F-2	Case Chronology Log (CC-53)
F-3	Combined Scheduling Letter and Itemized Listing
F-4	Scheduling Letter and Itemized Listing for Section 503 Focused Review
F-5	Form for Complaint Involving Employment Discrimination by Federal Government Contractors or Subcontractors
F-6	Standard Text for Conciliation Agreement

FIGURE F-1: COMPLIANCE CHECK CONTROL SHEET

GENERAL INFORMATION **CMS Control #:**

Establishment Name: **Corporate Name:**

Street Address: **Street Address:**

City, State, Zip Code: **City, State, Zip Code:**

Company Contacts		Name	Title	Telephone Number
Establishment	CEO			
	EEO/AA			
Corporate	CEO			
	EEO/AA			

Outside Representation	Firm	Telephone Number

Total Employees	Total Minority	Total Female

Type of Review **Multiple Facility** **Last Review Date**

___ Initial ___ Follow-Up ____ Yes ____ No / /

DATES

Compliance Check Letter Mailed	On-site	Closure Letter Issued
/ /	/ /	/ /

FINDINGS

Inspected Items	Yes	No	N/A
• Information on prior year report	___	___	___
• Job advertisements, including evidence of job listings with the appropriate employment service delivery system (the state workforce agency job bank or the local employment service delivery system where the opening occurs)	___	___	___
• Accommodations for individuals with disabilities	___	___	___

If an item is not applicable, indicate the reason here:

RECOMMENDATION FOR CLOSURE

- If no items missing, leave blank.
- If prior year report missing (unless contractor was not covered in prior year), check under column #1.
- If job listings information missing, check under column #2.
- If accommodations information missing, check under column #3.
- If contractor refuses to grant access, check appropriate space.

	#1 **Prior Year Report**	**#2** **Job Listings**	**#3** **Accommodations**
Recordkeeping			

(Checking one of the above spaces will place the contractor into a pool for further evaluation.)

Failure to Grant Access (Explain)	

(Checking the space above will indicate the contractor will be selected for another compliance evaluation method.)

Technical Assistance Needed:_Yes__No

Additional Pertinent Information:

	Compliance Officer	**ADD**	**DD**
Signature			
Date			

FIGURE F-2: CASE CHRONOLOGY LOG (CC-53)

NAME & ADDRESS OF CONTRACTOR/COMPLAINANT	CASE EVALUATION No.
NAME OF CHIEF EXECUTIVE OFFICER & PHONE NUMBER	NAME OF EEO COORDINATOR & PHONE NUMBER

DATE	PERSON CONTACTED Name and Title (*as appropriate*)	CHRONOLOGY Summary of Discussion or Action	OFCCP STAFF Name and Title (*as appropriate*)

FIGURE F-3: COMBINED SCHEDULING LETTER AND ITEMIZED LISTING

OMB NO. 1250-0003
Expires 03/31/2020

VIA CERTIFIED MAIL
(NUMBER)
RETURN RECEIPT REQUESTED

(Name of contractor official)
(Title of contractor official)
(Establishment Name)
(Street Address)
(City, State, Zip Code)

Dear (Name of contractor official):

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), selected your _____ [**Insert:** establishment located at (address), functional unit (name or description of functional unit), or corporate headquarters located at (address)] for a _____ [**Insert:** compliance review, functional affirmative action program (FAAP) compliance review, or corporate management compliance evaluation (CMCE)]. We are conducting this _____ [**Insert:** compliance review, FAAP compliance review, or CMCE] under the authority of Executive Order (EO) 11246, Section 503 of the Rehabilitation Act of 1973 (Section 503), the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA) and their implementing regulations in 41 CFR Chapter 60.[428] In addition to determining your compliance with these authorities, we will also verify your compliance with the regulations issued by the Veterans' Employment and Training Service (VETS) requiring contractors and subcontractors covered by VEVRAA to file an annual report on their employment and hiring of protected veterans.[429]

The compliance review may progress in three phases: a desk audit, an on-site review, and an off-site analysis. OFCCP describes the phases of a compliance review in its regulations at 41 CFR Chapter 60.[430] For the desk audit, please submit the following information:

---

[428] Executive Order 11246, 30 FR 12319, 3 CFR 339 (1964-1965), *as amended by* E.O. 11375, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, E.O. 12086, 43 FR 46501, 1978 Comp., p. 230 and E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258, E.O. 13665, 79 FR 20749 and E.O. 13672, 79 FR 42971; Section 503 of the Rehabilitation Act of 1973, *as amended,* 29 U.S.C. § 793; Vietnam Era Veterans' Readjustment Assistance Act of 1974, *as amended*, 38 U.S.C. § 4212.

[429] 41 CFR Part 61-300 implements 38 U.S.C. § 4212(d), as amended by the Jobs for Veterans Act. The implementing regulations require covered federal contractors to submit, at least annually, a report on veterans' hiring and workforce representation to the Department of Labor. In addition, 41 CFR 60-300.60(c) provides that if a contractor has not complied with any such reporting requirement, OFCCP will notify VETS.

[430] 41 CFR 60-1.20(a), 60-300.60(a), and 60-741.60(a).

1. a copy of your current Executive Order Affirmative Action Program (AAP) prepared in accordance with the requirements of 41 CFR § 60-1.40, and 41 CFR § 60-2.1 through § 60-2.17;
2. a copy of your current Section 503 AAP prepared in accordance with the requirements of 41 CFR § 60-741.40 through § 60-741.47;
3. a copy of your current VEVRAA AAP prepared in accordance with the requirements of 41 CFR § 60-300.40 through § 60-300.45; and
4. the support data specified in the enclosed Itemized Listing.

Please submit your AAP(s) and the Itemized Listing support data to the address listed on page one of this letter as soon as possible, but no later than 30 days from the date you receive this letter. Pursuant to 41 CFR §§ 60-1.12(e), 60-300.80(c), and 741.80(c), failure to preserve complete and accurate records constitutes noncompliance with your obligations as a federal contractor or subcontractor. Once the evaluation begins, you are required to maintain all personnel and employment records described in the regulations enforced by OFCCP until the final disposition of the evaluation.[431]

We encourage you to submit your information in an electronic format to reduce the amount of time it takes to complete our evaluation of your [Insert establishment, functional unit, or corporate headquarters]. Should you opt to email your submissions, use email address _____.

You should be aware that OFCCP may initiate enforcement proceedings if you fail to submit AAPs and support data that represent a reasonable effort to meet the requirements of the regulations in 41 CFR Chapter 60.

Please also be aware that OFCCP may use the information you provide during a compliance evaluation in an enforcement action. We may also share that information with other enforcement agencies within DOL, as well as with other federal civil rights enforcement agencies with which we have information sharing agreements.

Finally, the public may seek disclosure of the information you provide during a compliance evaluation. Under current law and regulations, OFCCP is required to comply with Freedom of Information Act, the Trade Secrets Act, the Privacy Act, and the 1987 Executive Order governing the disclosure of confidential commercial information.[432]

Please contact _____at _____if you have any questions concerning the compliance evaluation.

---

[431] 41 CFR 60-1.12(a), 60-300.80(a), and 60-741.80(a).
[432] 41 CFR 60-1.20(g); 60-300.81; 60-741.81; Freedom of Information Act, *as amended*, 5 U.S.C. § 552 (2009).

Sincerely,

(Name of District Director)
District Director

Enclosure (1)
Itemized Listing

ITEMIZED LISTING

Executive Order 11246

1. An organizational display or workforce analysis prepared according to 41 CFR § 60-2.11.

2. The formation of job groups (covering all jobs) consistent with criteria given in 41 CFR § 60-2.12.

3. For each job group, a statement of the percentage of minority and female incumbents as described in 41 CFR § 60-2.13.

4. For each job group, a determination of minority and female availability that considers the factors given in 41 CFR § 60-2.14(c)(1) and (c)(2).

5. For each job group, the comparison of incumbency to availability as explained in 41 CFR § 60-2.15.

6. Placement goals for each job group in which the percentage of minorities or women employed is less than would be reasonably expected given their availability as described in 41 CFR § 60-2.16.

Section 503

7. Results of the evaluation of the effectiveness of outreach and recruitment efforts that were intended to identify and recruit qualified individuals with disabilities as described in 41 CFR § 60-741.44(f).

8. Documentation of all actions taken to comply with the audit and reporting system requirements described in 41 CFR § 60-741.44(h).

9. Documentation of the computations or comparisons described in 41 CFR § 60-741.44(k)for the immediately preceding AAP year and, if you are six months or more into your current AAP year when you receive this listing, provide the information for at least the first six months of the current AAP year.

10. The utilization analysis evaluating the representation of individual with disabilities in each job group, or, if appropriate, evaluating the representation of individuals with disabilities in the workforce as a whole, as provided in 41 CFR § 60-741.45. If you are six months or more into your current AAP year on the date you receive this listing, please also submit information that reflects current year progress.

VEVRAA

11. Results of the evaluation of the effectiveness of outreach and recruitment efforts that were intended to identify and recruit qualified protected veterans as described in 41 CFR § 60-300.44(f).

12. Documentation of all actions taken to comply with the audit and reporting system requirements described in 41 CFR § 60-300.44(h).

13. Documentation of the computations or comparisons described in 41 CFR § 60-300.44(k)for the immediately preceding AAP year and, if you are six months or more into your current AAP year when you receive this listing, provide the information for at least the first six months of the current AAP year.

14. Documentation of the hiring benchmark adopted, the methodology used to establish it if using the five factors described in § 60-300.45(b)(2). If you are six months or more into your current AAP year on the date you receive this listing, please also submit current year hiring data to measure against your benchmark.

Support Data

15. Copies of your Employer Information Report EEO-1 (Standard Form 100 Rev.) for the last three years.[433]

16. A copy of your collective bargaining agreement(s), if applicable. Include any other documents you prepared, such as policy statements, employee notices or handbooks, etc. that implement, explain, or elaborate on the provisions of the collective bargaining agreement.

17. Information on your affirmative action goals for the immediately preceding AAP year and, where applicable (see below), progress on your goals for the current AAP year.[434]

    For the immediately preceding AAP year, this report must include information that reflects:

    a. job group representation at the start of the AAP year (*i.e.*, total incumbents, total minority incumbents, and total female incumbents);

    b. the percentage placement rates (percent goals) established for minorities and women at the start of the AAP year; and

    c. the actual number of placements (hires plus promotions) made during the AAP year into each job group with goals (*i.e.*, total placements, total minority placements, and total female placements). For goals not attained, describe the specific good faith efforts made to remove identified barriers, expand equal employment opportunity, and produce measurable results.

If you are six months or more into your current AAP year on the date you receive this Scheduling Letter and Itemized Listing, please also submit information that reflects progress on

[433] 41 CFR 60-1.7.
[434] CFR 60-1.12(a), 60-2.1(c), and 60-2.16.

goals established in your current AAP year, and describe your implementation of action-oriented programs designed to achieve these goals.[435]

18. Data on your employment activity (applicants, hires, promotions, and terminations) for the immediately preceding AAP year and, if you are six months or more into your current AAP year when you receive this listing, provide the information in (a) through (c) below for at least the first six months of the current AAP year. You should present this data by job group (as defined in your AAP) or by job title.[436]

    a. Applicants: For each job group or job title, this analysis must consist of the total number of applicants identified by gender and by race/ethnicity.[437] For each job group or job title, applicants for whom race and/or gender is not known should be included in the data submitted. However, if some of your job groups or job titles (most commonly, entry-level) are filled from the same applicant pool, you may consolidate your applicant data for those job groups or titles. For example, where applicants expressly apply for or would qualify for a broad spectrum of jobs (such as "Production," "Office," etc.) that includes several job groups, you may consolidate applicant data.

    b. Hires: For each job group or job title, this analysis must consist of the total number of hires identified by gender and race/ethnicity.

    c. Promotions: For each job group or job title, provide the total number of promotions by gender and race/ethnicity. Also, include a definition of "promotion" as used by your company and the basis on which they were compiled (e.g. promotions to the job group, from and/or within the job group, etc.). If it varies for different segments of your workforce, please define the term as used for each segment. If you present promotions by job title, include the department and job group from which and to which the person(s) was promoted.

    d. Terminations: For each job group or job title, provide the total number of employee terminations by gender and race/ethnicity. When presenting terminations by job title, include the department and job group from which the person(s) terminated.

19. Employee level compensation data for all employees (including but not limited to full-time, part-time, contract, per diem or day labor, and temporary employees) as of the date of the organizational display or workforce analysis. Provide gender and race/ethnicity information and hire date for each employee as well as job title, EEO-1 Category and job group in a single file.[438] Provide all requested data electronically, if maintained in an electronic format. See Note 1, below.

---

[435] 41 CFR 60-1.12 and 60-2.17(c).
[436] 41 CFR 60-1.12, 60-2.11-12, 60-2.17(b)(2)and(d)(1), 60-3.4, and 60-3.15.
[437] The term "race/ethnicity" as used throughout the Itemized Listing includes these racial and ethnic groups: African-American/Black, Asian/Pacific Islander, Hispanic, American Indian/Alaskan Native, and White. You also have the option of submitting the requested data using the race and ethnic categories on the EEO-1 survey.
[438] 41 CFR 60-2.17(b)(3) and (d).

a. For all employees, compensation includes base salary and or wage rate, and hours worked in a typical workweek. Other compensation or adjustments to salary such as bonuses, incentives, commissions, merit increases, locality pay or overtime should be identified separately for each employee.

b. You may provide any additional data on factors used to determine employee compensation, such as education, past experience, duty location, performance ratings, department or function, and salary level/band/range/grade.

c. Documentation and policies related to compensation practices of the contractor should also be included in the submission, particularly those that explain the factors and reasoning used to determine compensation.

20. Copies of reasonable accommodation policies, and documentation of any accommodation requests received and their resolution, if any.

21. Your most recent assessment of your personnel processes, as required by 41 CFR § 60-300.44(b) and § 60-741.44(b), including the date the assessment was performed, any actions taken or changes made as a result of the assessment, and the date of the next scheduled assessment.

22. Your most recent assessment of physical and mental qualifications, as required by 41 CFR § 60-300.44(c)and § 60-741.44(c), including the date the assessment was performed, any actions taken or changes made as a result of the assessment, and the date of the next scheduled assessment.

NOTES

Note 1: If any of the requested information is computerized, you must submit it in an electronic format that is complete, readable, and useable. Please use caution when submitting large electronic files. Check with the OFCCP Compliance Officer and your system administrator to ensure adherence to administrative and system guidelines.

Note 2: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1250-0003. We estimate that the average time required to complete this information collection is 27.9 hours per response, including the time for evaluating instructions, searching existing data sources, gathering and maintaining the data needed, and completing and evaluating the collection of information.

Send any comments concerning this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Federal Contract Compliance Programs, Room C-3325, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FIGURE F-4: SCHEDULING LETTER AND ITEMIZED LISTING FOR SECTION 503 FOCUSED REVIEW

OMB No. 1250-0003
Expires 03/31/2020

Dear (Name of contractor official):

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), selected your _____ [Insert: establishment located at (address), functional unit (name or description of functional unit), or corporate headquarters located at (address)] for a focused compliance review. We are conducting this focused review under the authority of Section 503 of the Rehabilitation Act of 1973 (Section 503) and its implementing regulations in 41 CFR Chapter 60.[439]

A compliance evaluation may consist of any one or any combination of investigative procedures. OFCCP describes the phases of a compliance evaluation in its regulations at 41 CFR Chapter 60. For the purposes of this focused review desk audit, you are only required to submit the following information:

1. A copy of your current Executive Order 11246 Affirmative Action Program (AAP) prepared in accordance with the requirements of 41 CFR 60-1.40, and 41 CFR 60-2.1 through 60-2.17;

2. A copy of your current Section 503 AAP prepared in accordance with the requirements of 41 CFR 60-741.40 through 60-741.47;

3. The formation of job groups (covering all jobs) consistent with criteria given in 41 CFR 60-2.12;

4. Results of the evaluation of the effectiveness of outreach and recruitment efforts that were intended to identify and recruit qualified individuals with disabilities as described in 41 CFR 60-741.44(f);

5. Documentation of all actions taken to comply with the audit and reporting system requirements described in 41 CFR 60-741.44(h);

6. Documentation of the computations or comparisons described in 41 CFR 60-741.44(k)for the immediately preceding AAP year and, if you are six months or more into your current

[439] 41 CFR 60-741 – Affirmative Action and Nondiscrimination Obligations of Federal Contractors and Subcontractors Regarding Individuals with Disabilities

AAP year when you receive this listing, provide the information for at least the first six months of the current AAP year;

7. The utilization analysis evaluating the representation of individual with disabilities in each job group, or, if appropriate, evaluating the representation of individuals with disabilities in the workforce as a whole, as provided in 41 CFR 60-741.45. If you are six months or more into your current AAP year on the date you receive this listing, please also submit information that reflects current year progress;

8. Copies of your Employer Information Report EEO-1 (Standard Form 100 Rev.) for the last three years;

9. A copy of your collective bargaining agreement(s), if applicable. Include any other documents you prepared, such as policy statements, employee notices or handbooks, etc. that implement, explain, or elaborate on the provisions of the collective bargaining agreement;

10. Copies of reasonable accommodation policies, and documentation of any accommodation requests received and their resolution, if any;

11. Your most recent assessment of your personnel processes, as required by 41 CFR 60-741.44(b), including the date the assessment was performed, any actions taken or changes made as a result of the assessment, and the date of the next scheduled assessment; and,

12. Your most recent assessment of physical and mental qualifications, as required by 41 CFR 60-741.44(c), including the date the assessment was performed, any actions taken or changes made as a result of the assessment, and the date of the next scheduled assessment.

Please submit your AAP(s) and support data to the address listed on page one of this letter as soon as possible, but no later than 30 days from the date you receive this letter. Pursuant to 41 CFR 60-1.12(e) and 741.80(c), failure to preserve complete and accurate records constitutes noncompliance with your obligations as a federal contractor or subcontractor. Once the evaluation begins, you are required to maintain all personnel and employment records described in the regulations enforced by OFCCP until the final disposition of the evaluation.

We encourage you to submit your information in an electronic format to reduce the amount of time it takes to complete our evaluation of your [Insert establishment, functional unit, or corporate headquarters]. Should you opt to email your submissions, use email address _____.

You should be aware that OFCCP may initiate enforcement proceedings if you fail to submit AAPs and support data that represent a reasonable effort to meet the requirements of the regulations in 41 CFR Chapter 60.

Please also be aware that OFCCP may use the information you provide during a compliance evaluation in an enforcement action. We may also share that information with other enforcement agencies within DOL, as well as with other federal civil rights enforcement agencies with which we have information sharing agreements.

Finally, the public may seek disclosure of the information you provide during a compliance evaluation. Under current law and regulations, OFCCP is required to comply with Freedom of Information Act, the Trade Secrets Act, the Privacy Act, and the 1987 Executive Order governing the disclosure of confidential commercial information.

Please contact _____at _____if you have any questions concerning the compliance evaluation.

Sincerely,

(Name of District Director)
District Director

FIGURE F-5: FORM FOR COMPLAINT INVOLVING EMPLOYMENT DISCRIMINATION BY FEDERAL GOVERNMENT CONTRACTORS OR SUBCONTRACTORS

THE MOST CURRENT VERSION OF THE COMPLAINT FORM IS AVAILABLE ON THE OFCCP WEBSITE.

FIGURE F-6: STANDARD TEXT FOR CONCILIATION AGREEMENT

PAGE INTENTIONALLY LEFT BLANK

LETTERS L-1 – L-41

Letter Number	Letter Title
L-1	Sample Administrative Closure Letter for Supply & Service and Construction Compliance Evaluations
L-2	Sample Inquiry Letter for Requesting Complaint Data From EEOC, and State and Local FEPs
L-3	Sample Letter for Requesting Job Listing from Employment Service Delivery Systems
L-4	Sample Inquiry Letter for Requesting Information on Pending Review from Veterans Employment and Training Service
L-5	Notice of Closing: Compliance Evaluation (No Violations Found)
L-6	Notice of Closing: Violations Found and Resolved
L-7	Supply & Service On-site Confirmation Letter
L-8	Sample Linkage Letter
L-9	Construction Compliance Evaluation Notice
L-10	Construction Outreach Letter for New Projects
L-11	10-Day Notice to Employer/Contractor
L-12	10-Day Notice to Complainant
L-13	Letter to EEOC (Full or Partial Transfer of Complaint)
L-14	Authorization for Release of Medical Information
L-15	Letter Notifying Contractor of Investigation
L-16	Letter Notifying Complainant of Investigation
L-17	Inquiry Letter to U.S. Department of Justice or the U.S. Department of State
L-18	Confirmation of Scheduling of On-site Investigation
L-19	Letter to Contractor Confirming Complaint Resolution
L-20	Letter to Complainant Confirming Complaint Resolution
L-21	Notification of Results of Investigation: No Violation (Executive Order 11246, Section 503, or VEVRAA Complaint (Not Dual Filed - No Notice of Right to-Sue))
L-22	Notification of Results of Investigation and Notice of Right-to-Sue under Title I of the ADA or Title VII of the Civil Rights Act of 1964: No Violation (Dual Filed)
L-22A	Enclosure: Notice of Right-to-Sue Under Title I of the ADA or Title VII of the Civil Rights Act of 1964
L-23	Notice of Right-to-Sue Under Title I of the ADA or Title VII of the Civil Rights Act of 1964 (Issued Upon Request)
L-24	Notice of Right-to-Sue Under Title I of the ADA or Title VII of the Civil Rights Act of 1964 (Administrative Closure)
L-25	Notice of Results of Investigation: Violation
L-26	Show Cause Notice: Failure to Submit Executive Order 11246, Section 503 or VEVRAA AAP(s) (Supply & Service)

Letter Number	Letter Title
L-27	Show Cause Notice: Failure to Submit Acceptable Executive Order 11246, Section 503 or VEVRAA AAP(s) (Supply & Service)
L-27A	Sample Enclosure to Letter L-27
L-28	Show Cause Notice: Failure to Submit Employment Activity or Compensation Data for Desk Audit (Supply & Service Executive Order Compliance Evaluations)
L-29	Show Cause Notice: Failure to Submit Corrected Employment Activity and/or Compensation Data (Supply & Service Executive Order Compliance Evaluations)
L-30	Show Cause Notice: Unresolved Violations (Compliance Evaluations)
L-30A	Sample Enclosure to Letter L-30
L-31	Show Cause Notice: Unresolved Violations (Complaint Investigations)
L-32	Amended Show Cause Notice for Unresolved Violations (Compliance Evaluations)
L-33	Show Cause Notice for Denial of Access (Compliance Evaluations & Complaint Investigations)
L-34	Rescission of an Erroneously Issued Show Cause Notice
L-35	Predetermination Notice
L-36	Notice of Violation
L-37	15-Day Notice: Violation of a Conciliation Agreement
L-37A	Sample Enclosure to Letter L-37
L-38	Rescission of the 15-Day Notice
L-39	Progress Report Response Letter
L-40	Closure Letter for Substantive Violations (Where a Show Cause Notice was Issued)
L-41	Closure Letter for Substantive Violations (No Show Cause Notice Issued)

LETTER L-1: SAMPLE ADMINISTRATIVE CLOSURE LETTER FOR SUPPLY & SERVICE AND CONSTRUCTION COMPLIANCE EVALUATIONS

Certified Mail, Return Receipt Requested AND Electronic Mail

[*Name of Establishment CEO or Construction Work Site CEO*]
[*Title of CEO*]
[*Establishment Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear [*Name of CEO*]:

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), recently scheduled a compliance evaluation of the equal employment opportunity policies and practices at your (*insert as appropriate:* establishment or construction work sites) located at (*insert establishment address or name of the geographic area for construction sites*).

This review has been administratively closed because (*insert reason for administrative closure such as "it has been less than 24 months since OFCCP completed its review of your establishment"*).

OFCCP appreciates the cooperation of you and your staff.

Sincerely,

(*insert name of district director*)
District Director

cc: [*insert name of the corporate CEO*]
[*insert name of the designated representative*]

LETTER L-2: SAMPLE INQUIRY LETTER FOR REQUESTING COMPLAINT DATA FROM EEOC AND STATE AND LOCAL FEPS

[*Date*]

[*Name/Title*]
[*Agency or Organization Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear_____:

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), scheduled a compliance evaluation for (*insert name of contractor*).

Our evaluation will assess the contractor's compliance with Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212; and the implementing regulations for these authorities. These legal authorities prohibit employment discrimination and require affirmative action to provide equal employment opportunity without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. Additionally, Executive Order 11246 prohibits federal contractors and subcontractors from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, in certain circumstances, the pay of their co-workers.

Please forward any information you have concerning complaints, charges or litigation filed against this contractor. We are also seeking any other information you may have concerning the EEO attitudes, policies and practices of the contractor that you believe we should consider during the compliance evaluation.

The evaluation will begin in approximately 30 calendar days. Therefore, OFCCP would appreciate receiving your prompt response to this inquiry. Please contact me at (*insert phone number*) should you have any questions or require additional information.

Sincerely,

(*insert name of compliance officer*)
Compliance Officer

LETTER L-3: SAMPLE LETTER FOR REQUESTING JOB LISTING FROM EMPLOYMENT SERVICE DELIVERY SYSTEMS (INCLUDING AMERICAN JOB CENTERS)

[*Date*]

[*Name/Title*]
[*Agency or Organization Name*]
[*Street Address*]
[*City, State, Zip Code*]

Re: Request for Job Listings

Dear (*insert name*):

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), scheduled the below-listed company for a compliance evaluation under Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793); and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212); and the implementing regulations at 41 CFR chapter 60.

(*insert contractor's name and mailing address*)

As a part of the compliance evaluation, OFCCP must determine whether the company named above listed suitable job openings with the appropriate employment service delivery system, as required (this includes state workforce agencies and local American Job Centers). To determine the contractor's compliance with the mandatory job listing requirements, we are requesting that you provide this office with the below information.

- The specific job orders placed with your office by the contractor for the past two years; and
- Confirmation that the contractor provided information about its openings in a manner and format that allowed your office to provide priority referral of veterans.

Also, provide us with any other information related to the contractor's compliance with its job listing obligations of which you may be aware. Please contact me at (*insert phone number*) should you have any questions or require additional information.

Thank you for your cooperation.

Sincerely,

(*insert name of compliance officer*)
Compliance Officer

LETTER L-4: SAMPLE INQUIRY LETTER FOR REQUESTING INFORMATION ON PENDING REVIEW FROM VETERANS EMPLOYMENT AND TRAINING SERVICE

[*Date*]

[*Name/Title*]
[*DOL VETS Regional Office*]
[*Street Address*]
[*City, State, Zip Code*]

Dear (*insert name*):

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), is conducting a compliance review of (*insert name of contractor*).

As a federal contractor, this company assumed obligations and responsibilities under the laws enforced by OFCCP requiring contractors to take affirmative action to employ protected veterans, and to list all employment openings as defined at 41 CFR 60-300.5 with the appropriate employment service delivery system.

Please provide any information you have concerning (*insert name of contractor*) compliance with its obligations including, but not limited to, information on complaints and job listings for the past year. Your information should be sent to me at the above address or by email to (*insert email address*).

If you have any questions, please contact me at (*insert phone number*). Thank you for your assistance in this matter.

Sincerely,

(*insert name of compliance officer*)
Compliance Officer

LETTER L-5: NOTICE OF CLOSING: COMPLIANCE EVALUATION (NO VIOLATIONS FOUND)

Certified Mail, Return Receipt Requested AND Electronic Mail

[*Date*]

[*Name of CEO*]
[*Title of CEO*]
[*Establishment Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear (*insert name of contractor's official*):

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), recently completed a compliance evaluation of your equal employment opportunity policies and practices at (*insert name and location of the establishment, construction work sites in the economic area under review or functional unit reviewed*).

During the compliance evaluation process, we found no apparent violations of Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; or Executive Order 13496.

[*If applicable, commend the contractor for meeting EEO goals or using best practices*. *For example:* We would like to recognize and commend (*insert contractor name*) for exceeding the hiring benchmark for protected veterans and disability utilization goal. Please accept the attached listing of local recruitment sources to utilize as you continue to conduct positive outreach and recruitment.]

OFCCP appreciates the cooperation of you and your staff during the conduct of the compliance evaluation.

Sincerely,

(*insert name of district director*)
District Director

cc: [*insert names*]

LETTER L-6: NOTICE OF CLOSING: VIOLATIONS FOUND AND RESOLVED

Certified Mail, Return Receipt Requested AND Electronic Mail

[*Date*]

[*Name of CEO*]
[*Title of CEO*]
[*Establishment Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear (*insert name of contractor's official*):

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), recently completed a compliance evaluation of your equal employment opportunity policies and practices at (*insert name and location of the establishment, construction work sites in the economic area under review or functional unit reviewed*).

During the compliance evaluation process, we identified and resolved the following violation(s): [*insert the technical violation(s) resolved during the compliance evaluation, including the appropriate regulatory citation and specific remedy*]. It is understood that this/these violation(s) will not recur.

There were no other apparent violations of Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; or Executive Order 13496.

OFCCP appreciates the cooperation of you and your staff during the conduct of the compliance evaluation.

Sincerely,

(*insert name of district director*)
District Director

cc: [*insert names*]

LETTER L-7: SUPPLY & SERVICE ON-SITE CONFIRMATION LETTER

Sent Certified Mail, Return Receipt Requested

[Date]
[Name of Contractor Official]
[Title]
[Street Address]
[City, State, Zip Code]

RE: *[Name of company/facility]*

Dear *(contractor official)*:

This letter confirms that the U. S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) will begin the on-site phase of the compliance evaluation of your facility located at [*facility address*] on [*date*] at [*time*].

During a preliminary review of [*name of company/facility*]'s scheduling letter submission, OFCCP identified at least the following areas for further investigation:

(1) [*e.g.*, *Hiring practices in the Technician I job group*]; and

(2) [*e.g., Compensation policies and practices for women in the following job groups: Engineer I, Project Architect, and Principal*].

Please note that these areas of investigation are based on preliminary indicators of potential violations identified during the desk audit. OFCCP has not determined that [*name of company/facility*] is in violation of any laws. Identification of these preliminary indicators does not limit the scope of OFCCP's authority to confirm compliance with other requirements or investigate other potential violations that it discovers during this compliance evaluation.

The on-site will begin with an entrance conference. At a minimum, this should be attended by the highest-ranking official at the facility as well as the human resources official and, if separate, the equal employment opportunity official. Upon the conclusion of the on-site, an exit conference will be conducted with the same participants present at the entrance conference.

As explained by [*compliance officer*] the initial on-site will include a facility inspection, interviews with managers, company officials and employees, and the review and collection of records and documents. A private area will be required for conducting interviews and reviewing records. Specific individuals to be interviewed as well as records required for review are identified in the attachment to this letter.

Since all requested information will become part of the official case file, it is crucial that photocopies of the original documents be made available to us during the on-site investigation. The only exception would be actual personnel files. Provided documents

should not have been redacted or edited in any way, and all provided personnel files should be original and complete.

Please be aware that these requests are not intended to be all-inclusive and could be expanded. Furthermore, due to the limited amount of time that will be spent on-site at the facility, it is crucial that all of the information be prepared before the commencement of the on-site and submitted in an organized manner.

If you have any questions, please contact [*compliance officer*] at [*telephone number*] or [*e-mail address*].

Sincerely,

[*signature block of signing official*]

Attachment [*Note: no template is being provided for attachment as the information is specific to each contractor*]

LETTER L-8: SAMPLE LINKAGE LETTER

[*Date*]

[*Name of Resource Head or Contact*]
[*Title of Resource Head or Contact*]
[*Resource Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear (*insert name*):

(*Select either Paragraphs 1 and 3 or Paragraphs 2 and 3*)

Paragraph 1:

As we discussed on (*insert date*), the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) recommended and (*insert name and location of the establishment reviewed*) agreed to use your services to recruit applicants as part of their effort to meet their federal contractor affirmative action goals or needs as established under laws enforced by OFCCP. The specific job titles for which applicants are sought and the number of projected vacancies are listed below:

Job Title	Projected Vacancies
(job title name)	(insert #) _____
(job title name)	(insert #) _____

OR

Paragraph 2:

During a recent compliance review, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) recommended and (*insert name and location of the establishment reviewed*) agreed to use your services to recruit applicants as part of their effort to meet their federal contractor affirmative action goals or needs as established under laws enforced by OFCCP. The specific job titles for which applicants are sought and the number of projected vacancies are listed below:

Job Title	Projected Vacancies
(job title name)	(insert #) _____
(job title name)	(insert #) _____

Paragraph 3:

The company is a covered federal contractor that engages in affirmative action to ensure equal employment opportunity for all applicants and employees regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, disability or protected veteran status. All qualified applicants referred by you will be considered.

We hope that you will engage in a collaborative working relationship with (*insert name of the establishment reviewed*). Ideally, this relationship should benefit the company seeking workers, as well as qualified individuals who are seeking meaningful work. We request that you contact (*insert contact name*) with (*insert name of the establishment reviewed*) at (*insert phone number*) to discuss how you can assist with their employment needs.

Sincerely,

(*insert name of compliance officer*)
Compliance Officer

cc: (*insert name of the OFCCP regional linkage coordinator*)
(*insert name of the contractor*)

LETTER L-9: CONSTRUCTION COMPLIANCE EVALUATION NOTICE

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

(*Date*)

(*Name of Senior Contractor Official*)
(*Title of Senior Contractor Official*)
(*Contractor Name*)
(*Street Address*)
(*City, State, Zip Code*)

Dear (*Name of Senior Contractor Official*):

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), selected your construction projects located in the *(as appropriate, insert either 1) the name(s) of Standard Metropolitan Statistical Area(s) (SMSA)* ***or*** *2) the name of the non-SMSA(s))* for a compliance evaluation. The purpose of this evaluation is to determine if your company is in compliance with its equal employment opportunity (EEO) obligations under Executive Order 11246, as amended.

As you are aware from your previous communications with OFCCP, the on-site compliance evaluation will begin on (*insert date*) at your (*insert address or other location*) and it covers your employment policies, practices and EEO activities during the review period of (*insert date*) through (*insert date*). The compliance evaluation will cover all of your construction projects, *i.e.*, nonfederal, federal and federally assisted projects within the geographic area(s) described above.

While on-site, you should expect OFCCP to request to review and copy various documents, in the form in which you maintain them, related to your employment policies, practices and EEO activities. This information is needed in order for OFCCP to assess your compliance with Executive Order 11246, including the affirmative action steps required to provide equal opportunity in each trade employed on your construction projects within the geographic area(s) described above. You can find more details about these affirmative action obligations at 41 CFR Part 60-4. This evaluation will assess your efforts to prevent discrimination and take affirmative action, and the records you maintain to document these efforts.

[*INSERT THIS PARAGRAPH IF THE CONTRACTOR IS SUBJECT TO SECTION 503 and VEVRAA*] The evaluation will also assess the state of your company's compliance with its affirmative action and nondiscrimination obligations under Section 503 of the Rehabilitation Act of 1973, as amended (Section 503), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA). You can find more details about these obligations at 41 CFR Part 60-300 (VEVRAA) and 41 CFR Part 60-741 (Section 503).

You can facilitate the compliance evaluation process by making the personnel responsible for your employment processes, including assessing EEO compliance, and an officer of (*name of company*) available during our on-site review. Provided with this letter is an attachment,

Attachment A: Sample On-site Documents. This attachment is a nonexhaustive list of some of the documents OFCCP could request during the on-site portion of the compliance evaluation. Please do not generate, collect, copy and send any documents listed on this attachment to our office because the attachment is not a records production request. It is, however, informational in that it should provide you some idea of what information OFCCP could request during the on-site review.

During the on-site visit, an OFCCP compliance officer will specifically request documents and records to review and copy, as necessary. In addition, the compliance officer will visit one or more of your construction sites and interview some of your employees. Additional records pertaining to the requirements of 41 CFR Chapter 60 may be requested at a later point in the compliance evaluation.

If you have any questions, please contact compliance officer (*insert name of the compliance officer*) in the (*insert name of field office*) office of OFCCP at (*insert telephone number*).

Sincerely,

(*Name of district director*)
District Director

Enclosure

ENCLOSURE: SAMPLE ON-SITE DOCUMENTS

1) Original payroll records for the specified review period.

    a) Payroll records that identify the total hours worked by each trade in the geographic area(s), either the Standard Metropolitan Statistical Area(s) (SMSA) or the non-SMSA(s), and include the sex, race and ethnicity of each employee.

    b) Payroll records that identify the overtime hours worked by each trade in the geographic area(s) described above, and include the sex, race and ethnicity of each employee.

2) Personnel records for the specified review period.

    a) Personnel records that list the apprentices working in the applicable geographic area(s) during the specified review period, including the name of each apprentice employee, job classification, sex, race and ethnicity of the employee.

    b) Personnel records that list applicants (including referrals from any source), hires, promotions, layoffs, recalls and terminations (voluntary or involuntary) of construction trade employees during the review period in the applicable geographic area(s). The list should also include the name, job classification, sex, race and ethnicity of each employee.

3) Documents demonstrating how the company implements each of the specific affirmative action steps outlined in 41 CFR 60-4.3(a) paragraph 7(a-p).

4) Subcontracts more than $10,000 for federal and federally assisted contracts for the review period.

5) EEO Policy statement used by your company.

6) Notifications sent to OFCCP of subcontract awards of more than $10,000.

7) Records of notices to the company's subcontractors about their EEO obligations.

8) EEO-1 Reports for the last two years.

9) A list of all construction projects (federal, nonfederal and federally assisted) by name and location in the applicable geographic area(s) during the specified review period, including identifying whether each project is commercial or residential. For each federally funded project, OFCCP may seek additional information such as:

    a) Funding agency;

    b) Amount of contract;

    c) Date of award;

    d) Date construction started;

    e) Percent completed; and

f) Estimated completion date.

10) Communications with unions and community organizations regarding the company's EEO obligations and recruitment efforts to hire women and minorities, qualified individuals with disabilities if the company is subject to Section 503 and protected veterans if the company is subject to VEVRAA.

11) Records identifying trade organization affiliations and unions that provide workers for the company's construction contracts, including a copy of any applicable collective bargaining agreements.

12) Written affirmative action programs for individuals with disabilities and protected veterans, if the company is subject to Section 503 and VEVRAA.

13) Copies of purchase orders.

14) Copies of employment advertisements.

LETTER L-10: CONSTRUCTION OUTREACH LETTER FOR NEW PROJECTS

VIA REGULAR MAIL

[*Date*]

[*Name of Senior Contractor Official*]
[*Title of Senior Contractor Official*]
[*Contractor Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear [*Name of Senior Contractor Official*]:

Your company, [*insert name of company*], was awarded a contract or subcontract to work on the [*insert name of the construction project or location of the project*] construction project funded by the federal government. As a result, your company falls under the enforcement jurisdiction of the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). This letter is to provide you information regarding your obligations as an employer working on federal contracts concerning equal employment opportunity (EEO) and affirmative action.

As a civil rights enforcement agency, OFCCP administers and enforces three equal employment opportunity laws that apply to federal contractors and subcontractors: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503); and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA). These EEO laws prohibit federal contractors from discriminating on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, disability and status as a protected veteran. Additionally, Executive Order 11246 prohibits federal contractors and subcontractors from taking adverse employment actions against applicants and employees for asking about, discussing or sharing information about their pay or the pay of their co-workers, subject to certain limitations.

You are required to retain personnel and employment records for a certain amount of time. If requested, you must also grant OFCCP access to these records and your worksite. You must prominently post the *EEO is the Law* poster and supplement, and the *Employee Rights under the National Labor Relations Act* posters informing your applicants and employees of their rights. In addition, you must post the *Pay Transparency Nondiscrimination Provision* either physically or electronically and include it in your employee handbook or manual.

Federal construction contractors are required to comply with affirmative action specifications for minorities and women related to outreach and recruitment, employee development and training. These specifications can be found in the Code of Federal Regulations (CFR) at Title 41, Part 60-4. Federal construction contractors with a contract that meets the coverage threshold requirements also have affirmative action obligations concerning protected veterans and qualified individuals with disabilities under VEVRAA and Section 503. You can find more details about these obligations at 41 CFR Part 60-300 (VEVRAA) and 41 CFR Part 60-741 (Section 503).

In addition, our Help Desk (1-800-397-6251) and district offices are available to answer questions or to provide compliance assistance. If you have any further questions, please contact our office at [*insert office phone number and address*] and please visit our website at https://www.dol.gov/ofccp/ .

Sincerely,

[*Name of district director*]
District Director

LETTER L-11: 10-DAY NOTICE TO EMPLOYER/CONTRACTOR

[*Date*]

[*Name and address of employer*]

Complaint Reference Number: [*number*]

Dear [*insert name of Employer/Contractor Official*]:

This is to notify you that on [*insert date*] we received a complaint from [*insert as appropriate: name of complainant - or - authorized representative*] alleging a violation of [*insert: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended (Section 503); or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA)*].

[*Insert for Executive Order 11246 and/or Section503 complaints only: Under the provisions of a Memorandum of Understanding Between the Office of Federal Contract Compliance Programs (OFCCP) and the U.S. Equal Employment Opportunity Commission (EEOC) effective November 7, 2011, and/or regulations at 41 CFR Part 60-742*], the complaint is deemed simultaneously dual filed as a charge under [*insert as appropriate: Title VII of the Civil Rights Act of 1964, as amended (Title VII); and/or Title I of the Americans with Disabilities Act, as amended (ADA)*].

The complainant alleges that [*insert the name of the employer, and the alleged discriminatory actions or practices, including the date(s) of occurrence and relevant place and circumstances*].

[*Insert for Executive Order 11246 and/or Section 503 complaints only: Title VII and/or the ADA*] requires us to send you notice of the filing within 10 calendar days of our receipt of a complaint.

Insert whichever of the following statements are applicable:

- We have determined that OFCCP has jurisdiction to address the allegations of employment discrimination stated in the complaint and will proceed with an investigation.

- [*Insert for full transfer –EEOC better suited to investigate*] We have closed the complaint because it contains matters better suited to investigation and resolution by the EEOC under one or more of the laws it enforces. The complaint, in its entirety, has been transferred to the EEOC for investigation.

- [*Insert for full transfer – no jurisdiction*] We have closed the complaint because we are unable to establish jurisdiction. The complaint has been referred to the [*EEOC or other appropriate agency*] for consideration.

- [*Insert for partial transfer*] We have determined that OFCCP has jurisdiction over and will retain for investigation the following allegations: [*insert description of retained allegations and their bases*]. However, OFCCP has transferred to [*insert EEOC or other appropriate agency*] the following allegations: [*insert description of allegations being transferred*].

- We have not yet determined whether OFCCP has jurisdiction to investigate the complaint. If we establish jurisdiction over the employer, OFCCP will investigate the complaint under [*insert: Executive Order 11246, Section 503 and/or VEVRAA; or, if complaint is dual filed, insert: Executive Order 11246 and Title VII and/or Section 503 and the ADA*]. If we are unable to establish jurisdiction over all or part of the complaint, we will inform you.

Please be advised that both OFCCP and EEOC regulations require that you retain all records pertinent to this complaint and ensure that there is no retaliation because of this complaint.

In the event this complaint was filed with the EEOC under [*insert: Title VII and/or the ADA*], you may receive a similar 10-day notice from the EEOC. If so, please contact [*name*] at [*telephone number*] immediately and we will resolve the matter with the EEOC.

Sincerely,

[*Name of regional director*]
Regional Director

LETTER L-12: 10-DAY NOTICE TO COMPLAINANT

[*Date*]

[*Name and address of*
Complainant or
Authorized Representative]

Complaint Reference Number: [*number*]

Dear [*insert Name of Complainant or Authorized Representative*]:

This is to acknowledge receipt of your complaint against [*insert: name of employer*] [*insert if appropriate: on behalf of (name of person)] alleging a violation of [insert: Executive Order 11246, as amended; and/or Section 503 of the Rehabilitation Act of 1973, as amended (Section 503); and/or Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA)*].

[*Insert for Executive Order 11246 and/or Section503 complaints only: Under the provisions of a Memorandum of Understanding Between the Office of Federal Contract Compliance Programs (OFCCP) and the U.S. Equal Employment Opportunity Commission (EEOC) effective November 7, 2011; and/or regulations at 41 CFR Part 60-742*], the complaint is deemed simultaneously dual filed as a charge under [*insert as appropriate:* Title VII of the Civil Rights Act of 1964, as amended (Title VII); and/or Title I of the Americans with Disabilities Act, as amended (ADA)].

[*Insert for Executive Order 11246 and/or Section 503 complaints only: Title VII and/or the ADA*] requires us to provide the employer against whom a complaint is filed with a notice of filing within 10 calendar days of our receipt of a complaint. Enclosed is a copy of the notice forwarded to [name of employer] concerning your complaint.

[Insert whichever of the following statements are applicable]

- We have determined that OFCCP has jurisdiction to address all of the allegations of employment discrimination stated in your complaint and will proceed with an investigation.

- [*Insert for full transfer*] We have closed your complaint because [*the complaint alleges individual discrimination covered by Title VII; the complaint alleges a violation of the Age Discrimination in Employment Act; or the complaint alleges a violation of the ADA and individual discrimination covered by Title VII and/or the Age Discrimination in Employment Act; and/or the complaint alleges discrimination under Title II of the Genetic Information Nondiscrimination Act of 2008.*] The complaint, in its entirety, has been transferred to the EEOC for investigation.

- [*Insert for full transfer*] We have closed your complaint because we are unable to establish jurisdiction. Your complaint has been referred to the [*EEOC or other appropriate agency*] for consideration.

- [*For partial transfer*] We have determined that OFCCP has jurisdiction over and will retain for investigation the following allegations: [*insert description of retained allegations and their bases*]. However, OFCCP has transferred to [*insert EEOC or other appropriate agency*] the following allegations: [*insert description of allegations being transferred*].

- We have not yet determined whether OFCCP has jurisdiction to investigate your complaint. We will notify you immediately if we establish jurisdiction over the employer. OFCCP will investigate your complaint under [*insert: Executive Order 11246, Section 503, and/or VEVRAA; or, if complaint is dual-filed, insert: Executive Order 11246 and Title VII and/or Section 503 and the ADA*]. If we are unable to establish jurisdiction over all or part of the complaint, we will inform you.

Please be sure to contact [*compliance officer*] at [*telephone number*] if you change your address or telephone number.

Sincerely,

[*Name of regional director*]
Regional Director

Enclosure: 10-Day Notice to Employer/Contractor

LETTER L-13: LETTER TO EEOC (FULL OR PARTIAL TRANSFER OF COMPLAINT)

[*Date*]

[*Name and Address of*
Equal Employment Opportunity Commission Office]

Complaint Reference Number: [*number*]

[*EEO Representative*]:

Enclosed for your consideration is a complaint filed under [*insert: Title VII of the Civil Rights Act of 1964, as amended (Title VII); Title I of the Americans with Disabilities Act, as amended; the Age Discrimination in Employment Act of 1967, as amended; and/or Title II of the Genetic Information Nondiscrimination Act of 2008.*]

[*Insert for full transfer of complaint*] The Office of Federal Contract Compliance Programs (OFCCP) has closed the complaint because [*Insert, as appropriate: we are unable to establish jurisdiction or it is better suited to investigation and resolution by EEOC*]. With this letter, OFCCP is transferring the complaint, in its entirety, to EEOC.

[*Insert for partial transfer of complaint*]: With this letter, OFCCP is transferring the following complaint allegation(s) to EEOC for investigation and processing: [*insert: descriptions of each allegation being transferred*]. OFCCP has retained and will investigate the following complaint allegation(s) [*insert; descriptions of each allegation being retained.*]

We have enclosed, for your information, copies of the letters sent to the employer and the complainant informing them of the transfer of [*insert: this matter or the referenced allegations*] to your office.

If you have any questions, please call me at [*phone number*].

Sincerely,

[*Insert regional director or designee's name*]
Regional Director

Enclosures: Complaint Form CC-4
Notices to Complainant and Employer

LETTER L-14: AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

Re: Complaint against [*insert name of contractor*]
OFCCP CMS #

I hereby authorize the release to the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), of any medical information needed by OFCCP in its investigation of the complaint of discrimination which I filed on [*insert date*]) against the above-named contractor.

_____

PRINTED/TYPED NAME OF PATIENT

_____ _____

SIGNATURE OF PATIENT DATE

LETTER L-15: LETTER NOTIFYING CONTRACTOR OF INVESTIGATION

Certified Mail, Return Receipt Requested

[*Date*]

[*Name of CEO*]
[*Title of CEO*]
[*Contractor Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear (*insert name of contractor official*):

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), received a complaint filed under the provisions of (*insert one or more of the appropriate legal authorities enforced by OFCCP*). A copy of the complaint is enclosed.

This office has been assigned the complaint for investigation under the (*insert the name of one or more of the appropriate legal authorities enforced by OFCCP underlying the complaint*) and its implementing regulations at (*insert the appropriate CFR part and section citations for the complaint*). The applicable regulations may be found on the U.S. Department of Labor's website at https://www.dol.gov/general/cfr/title_41 (see Chapter 60). The laws and regulations enforced by OFCCP prohibit federal contractors and subcontractors from discriminating in employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, disability or status as a protected veteran. They also require federal contractors and subcontractors to take affirmative action to employ and advance in employment individuals from these particular groups. In addition, contractors and subcontractors are prohibited from discriminating against applicants or employees because they inquired about, discussed or disclosed their compensation or that of others, subject to certain limitations.

As required by OFCCP's regulations, please retain full, accurate records relevant to this complaint and ensure that there is no harassment, intimidation, threat, coercion or discrimination against the complainant, or any participant in the investigation [*insert the appropriate citations:* 41 CFR 60-741.69 and 60-741.80-.81, 41 CFR 60-300.69 and 60-300.80-.81, 41 CFR 60-1.32 and 1.43].

This letter is a notice that OFCCP is investigating the complaint; it neither prejudges the issues nor implies that your company violated any law. It is also a notice to retain information that will later permit an expeditious investigation and resolution of this matter.

You may wish to review and attempt to resolve this complaint internally and, if you are successful in resolving it to the satisfaction of the complainant, we will need verification from the complainant. However, OFCCP reserves the option to conduct its own investigation if, in its judgment, the circumstances warrant.

If you do not wish to make an attempt to resolve this matter, or you are unsuccessful in doing so, you may wish to send us a statement of position or evidence concerning the complaint. Any

material you submit will be included in the case file, and will be considered when the complaint is investigated. Please note that during our investigation, we may need to examine your current Affirmative Action Program required under 41 CFR [*insert appropriate citations:* 41 CFR 60-741, Subpart C; 41 CFR Part 60-300, Subpart C; 41 CFR Part 60-2].

If you have any questions, you may contact [*insert name of compliance officer*] at [*insert telephone number*].

Sincerely,

[*insert name of district director*]
District Director

Enclosure: Complaint of [*insert name of complainant and CMS#*]

LETTER L-16: LETTER NOTIFYING COMPLAINANT OF INVESTIGATION

Certified Mail, Return Receipt Requested

[*Date*]

[*Name of Complainant*]
[*Street Address*]
[*City, State, Zip Code*]

Re: Complaint against [insert name of company and CMS #]

Dear [*insert name of complainant*]:

This letter is to inform you that your complaint has been assigned to this office for investigation by the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). We have notified the contractor of your complaint, provided the contractor a copy of the complaint, and advised the contractor of the opportunity to attempt to resolve the complaint if it wishes to do so. We also informed the contractor that our regulations require that all relevant records be retained; and that there be no harassment, intimidation, coercion or retaliation against you.

Please let us know immediately if the contractor and you resolve the complaint to your satisfaction, preferably in writing. In the meanwhile, we will schedule your complaint for investigation.

Please be sure to keep us advised of any change in your address or telephone number. If you have any questions, you may contact [*insert name of compliance officer*] at [*insert telephone number*].

Sincerely,

[*Name of district director*]
District Director

Enclosure: Copy of complaint for [*insert name of complainant and CMS#*] provided to the contractor

LETTER L-17: INQUIRY LETTER TO U.S. DEPARTMENT OF JUSTICE OR THE U.S. DEPARTMENT OF STATE

[*Date*]

[*Name/Title*]
[*Agency or Organization Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear_____:

The U.S. Department of Labor' Office of Federal Contract Compliance Programs (OFCCP), recently received a complaint alleging employment discrimination based on (*insert protected basis)* by (*insert name of contractor*).

OFCCP enforces Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212. These legal authorities prohibit employment discrimination and require affirmative action to provide equal employment opportunity without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. Additionally, Executive Order 11246 prohibits federal contractors and subcontractors from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, in certain circumstances, the pay of their co-workers.

Specifically, the complaint made the following allegations:

- (*Bullet out the allegations made by the complainant that OFCCP will investigate).*

Please forward any pertinent information you have concerning complaints, charges or litigation filed against this contractor. We are also seeking any other information you may have concerning the EEO attitudes, policies and practices of the contractor that you believe we should consider during the compliance evaluation.

OFCCP would appreciate receiving your prompt response to this inquiry. Please contact me at (*insert phone number*) should you have any questions or require additional information.

Sincerely,

(*insert name of compliance officer*)
Compliance Officer

LETTER L-18: CONFIRMATION OF SCHEDULING OF ON-SITE INVESTIGATION

Certified Mail, Return Receipt Requested

[*Date*]

[*Name of Contractor Official*]
[*Title*]
[*Street Address*]
[*City, State, Zip Code*]

Re: Complaint of [*insert complainant's name and CMS #*]

Dear [*insert name of contractor official*]:

This letter confirms the telephone call of [*insert date*] between Compliance Officer [*insert name*] with the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) and [*insert name of contractor official*] scheduling the investigation of the above complaint filed under [*insert one or more of these authorities: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended*].

As agreed, the investigation is to begin on [*insert date*] at [*insert time and location*]. In the telephone call mentioned above, [*insert compliance officer's name and title*] requested that certain records and individuals be available during the visit. These are listed in the attachment to this letter.

If you have any questions, please contact [*insert name of compliance officer*] at [*insert telephone number*].

Sincerely,

[*Name of district director*]
District Director

Attachment

LETTER L-19: LETTER TO CONTRACTOR CONFIRMING COMPLAINT RESOLUTION

Certified Mail, Return Receipt Requested

[*Date*]

[*Name of Contractor Official*]
[*Title*]
[*Street Address*]
[*City, State, Zip Code*]

Re: Complaint of [*insert name of complainant and CMS #*]

Dear [*insert name of contractor official*]:

On behalf of the U.S. Department of Labor, Office of Federal Contract Compliance Programs, this correspondence confirms [*insert as appropriate: your letter or our telephone conversation*] of [*insert date of the letter or telephone call*] in which you informed us that the above complaint was resolved to the satisfaction of the complainant. We have been in contact with the complainant who acknowledges that the parties reached a satisfactory resolution of the complaint.

We appreciate your efforts in resolving this matter.

Sincerely,

[*Name of district director*]
District Director

LETTER L-20: LETTER TO COMPLAINANT CONFIRMING COMPLAINT RESOLUTION

Certified Mail, Return Receipt Requested

[*Date*]

[*Name of Complainant*]
[*Street Address*]
[*City, State, Zip Code*]

Re: Complaint against [*insert the name of company and CMS #*]

Dear [*insert name of complainant*]:

On behalf of the U.S. Department of Labor's Office of Federal Contract Compliance Programs, this correspondence confirms [*insert as appropriate: your letter or our telephone conversation*] of [*insert date*]. During the [*insert as appropriate: in your letter or during the call*] you stated that your complaint against the above company was resolved to your satisfaction.

If you are satisfied with the resolution of your complaint, please sign on the line indicated below and return this letter to us in the enclosed stamped envelope.

Sincerely,

[*Name of district director*]
District Director

Enclosure: Self-addressed stamped envelope

There has been a satisfactory resolution to my complaint filed against [*insert name of contractor*]. I have not been forced or coerced by the contractor, or any of its agents, into making this statement.

Signature _____

Date _____

LETTER L-21: NOTIFICATION OF RESULTS OF INVESTIGATION: NO VIOLATION

(Executive Order 11246, Section 503, or VEVRAA Complaint (Not Dual Filed - no Notice of Right-to-Sue))

Certified Mail, Return Receipt Requested

[*Date*]

[*Complaint No.*]

COMPLAINANT

[*Complainant's Name*]
[*Street Address*]
[*City, State, Zip Code*]

CONTRACTOR

[*Contractor Name*]
[*Street Address*]
[*City, State, Zip Code*]

On (*insert date*), the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) investigated the allegations of (*insert type of discrimination*) made in the complaint of (*insert name of the complainant*) filed on (*insert date*). The investigation resulted in the following findings:

1. (*Insert name of contractor*) is a nonexempt government contractor subject to the requirements of (*insert one or more as appropriate:* Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended (Section 503); the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA)).

2. (*Insert name of complainant*) is (*insert description of the relevant protected basis, e.g., applicant, employee, African-American, protected veteran, individual with a disability, lesbian, transgender, etc.*) within the meaning of (*insert appropriate legal authority: Executive Order 11246, Section 503, VEVRAA*) and the regulations at (*insert as appropriate:* 41 CFR parts 60-1 to 60-50, 41 CFR part 60-300, 41 CFR part 60-741).

3. The complainant alleges the contractor violated its obligations under the nondiscrimination and/or affirmative action provisions of its federal contracts by (*insert description of employment action taken by contract: terminating, not promoting, not hiring, retaliation, disclosing pay, etc.*).

4. The contractor's position is that the complainant was (*insert description of employment action: terminated, not hired, not promoted, not retaliated against, etc.*) because (*insert description of the contractor's reasons or position*).

5. Our investigation indicates that the contractor (*insert description of findings/evidence related to contractor's employment actions*).

OFCCP's investigation found insufficient evidence that the contractor violated its obligations under the nondiscrimination and affirmative action provisions of (*insert one or more as appropriate:* Executive Order 11246, Section 503, VEVRAA). This determination concludes the processing of this complaint by OFCCP.

On behalf of the United States Department of Labor.

_____ _____
Regional Director Date

cc: (*insert name of complainant's attorney*)
(*insert name of the contractor's attorney*)

LETTER L-22: NOTIFICATION OF RESULTS OF INVESTIGATION AND NOTICE OF RIGHT-TO-SUE UNDER TITLE I OF THE ADA OR TITLE VII OF THE CIVIL RIGHTS ACT OF 1964: NO VIOLATION (Dual filed)

Certified Mail, Return Receipt Requested

U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

[*Complaint No.*]

[*Complainant's Name*] COMPLAINANT
[*Street Address*]
[*City, State, Zip Code*]

[*Contractor's Name*] CONTRACTOR
[*Street Address*]
[*City, State, Zip Code*]

On [*insert date*], the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) conducted an investigation of the allegation(s) of [*insert basis of complaint*] discrimination made in the complaint of [*insert name of complainant*], filed on [*insert date*] following procedures for complaints of employment discrimination filed against employers holding government contracts or subcontracts. Here are the results of our investigation:

1. [*Insert name of contractor*] is a nonexempt government contractor subject to the requirements of [*insert one or more as appropriate:* Executive Order 11246, as amended, and an employer of 15 or more persons subject to Title VII of the Civil Rights Act of 1964, as amended; Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA); Section 503 of the Rehabilitation Act of 1973, as amended (Section 503) and an employer of 15 or more persons subject to Title I of the Americans with Disabilities Act of 1990, as amended (ADA)].

2. [*Insert name of complainant*] is [*insert description of the relevant protected basis, e.g., applicant, employee, African-American, individual with a disability, lesbian, transgender, etc.*] covered or protected by [*insert one or more as appropriate:* Executive Order 11246 and Title VII; Section 503 and the ADA].

3. The complainant alleges the contractor violated its obligations under the nondiscrimination and/or affirmative action provisions of its federal contracts and under the nondiscrimination provisions of [*insert as appropriate:* Title VII or the ADA] by [*insert a description of the adverse personnel action or practice of the employer: terminating, not promoting, paying less, retaliation, etc.*].

4. The contractor's position is that the complainant was [*insert description of the adverse personnel action or practice of the employer: terminated, not hired, etc.*] because [*insert a description of the contractor's position or defense*].

5. Our investigation indicates that the contractor [*insert a description of what the contractor did or did not do*].

OFCCP's investigation found insufficient evidence that the contractor violated its obligations under the nondiscrimination and affirmative action provisions of [*insert one or more as appropriate:* Executive Order 11246 or Section 503] or under the nondiscrimination provisions of the [*insert one or more as appropriate:* Title VII or the ADA]. This determination concludes the processing of this complaint by OFCCP.

On behalf of the United States Department of Labor,

_____ _____
[Regional Director or Designee] [Date]

Enclosures: Information Related to Filing Suit under Title VII and the ADA
Notice of Right to Sue

cc: [*insert name of complainant's attorney*]
[*insert name of contractor's attorney*]
[*insert name of the EEOC field office contact*]

LETTER L-22A: ENCLOSURE: NOTICE OF RIGHT-TO-SUE UNDER TITLE I OF THE ADA OR TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

TO: [Complainant's Name and Address]

[__] On behalf of a person whose identity is confidential (29 CFR 1601.7(a))

FROM: [OFCCP Office Name and Address]

OFCCP Representative

Complaint Number:

TO THE COMPLAINANT: You may file a lawsuit against the contractor under [*insert as appropriate:* Title VII or ADA] in federal or state court. **Your lawsuit must be filed within 90 calendar days of receipt of this notice or your right to sue will be lost.** Please see the enclosed information sheet on filing lawsuits for further information.

With the issuance of this Notice of Right-to-Sue, OFCCP is terminating its processing of your complaint.

An information copy of this Notice has been sent to the below employer as named in your complaint.

[*insert employer's name and address*]

On behalf of the United States Department of Labor,

_____ _____
[Regional Director or Designee] [Date]
[*insert appropriate OFCCP office address*]

Enclosures (2): Information Related to Filing Suit under Title VII and the ADA
Copy of Complaint

cc: [*insert name of complainant's attorney*]
[*insert name of the contractor's attorney*]
[*insert name of the EEOC field office contact*]

LETTER L-23: NOTICE OF RIGHT-TO-SUE UNDER TITLE I OF THE ADA OR TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (Issued Upon Request)

Certified Mail, Return Receipt Requested

U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

TO: [Complainant's Name and Address]

[__] On behalf of a person whose identity is confidential (29 CFR 1601.7(a))

FROM: [OFCCP Office Name and Address]

OFCCP Representative

Complaint Number:

TO THE COMPLAINANT: This is your NOTICE OF RIGHT-TO-SUE under [Title I of the Americans with Disabilities Act of 1990, as amended] [Title VII of the Civil Rights Act of 1964, as amended] in reference to the complaint number indicated above. This Notice is issued at your request. If you intend to file a lawsuit against the employer named in your complaint, YOU MUST DO SO WITHIN 90 DAYS OF YOUR RECEIPT OF THIS NOTICE. OTHERWISE, YOUR RIGHT TO SUE IS LOST. (The time limit for filing suit based on a state claim may be different.)

[Select all that apply]

[__] More than 180 days have elapsed since you filed your complaint.

[__] Less than 180 days have elapsed since you filed your complaint, but it has been determined that OFCCP will be unable to complete its processing within 180 days from the date you filed your complaint. (Note: This reason is not acceptable to federal courts within the District of Columbia.)

[__] With the issuance of this Notice of Right-to-Sue, OFCCP is terminating its processing of your complaint.

[__] OFCCP will continue to investigate the following allegations in your complaint which are uniquely within OFCCP jurisdiction: [*list any allegation(s) not subject to ADA or Title VII, which are still under investigation*].

An informational copy of this Notice has been sent to the below employer as named in your complaint.

[*insert employer's name and address*]

For the United States Department of Labor,

_____ _____
Regional Director or Designee Date

Enclosures (2): Information Related to Filing Suit under Title VII and the ADA
Copy of Complaint

cc: [*insert name of complainant's attorney*]
[*insert name of contractor's attorney*]
[*insert name of EEOC field office contact*]

LETTER L-24: NOTICE OF RIGHT-TO-SUE UNDER TITLE I OF THE ADA OR TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (Administrative Closure)

Certified Mail, Return Receipt Requested

U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

TO: [Complainant's Name and Address]

[__] On behalf of a person whose identity is confidential (29 CFR 1601.7(a))

FROM: [OFCCP Office Name and Address]

OFCCP Representative

Complaint Number:

TO THE COMPLAINANT: This is your NOTICE OF RIGHT-TO-SUE under [Title I of the Americans with Disabilities Act of 1990, as amended] [Title VII of the Civil Rights Act of 1964, as amended] based on the above-numbered complaint. It is issued because OFCCP has dismissed your complaint for the following reason:

[Select all that apply]

[__] OFCCP has closed your complaint because, even if proven to be true, the allegation(s) raised in the complaint would not be a violation of the laws enforced by OFCCP.

[__] Your complaint was not filed in a timely manner. [*Insert as applicable: Executive Order 11246 requires that a complaint be filed within 180 calendar days from the date of the alleged discriminatory act or Complaints filed under VEVRAA and Section 503 must be filed within 300 calendar days from the date of the alleged discriminatory act to be timely.*] [*Insert if an extension had been requested: Your request for extension of the filing requirement and the additional information provided did not meet the criteria necessary to allow an extension for good cause for your delayed filing.*] Accordingly, we have closed your complaint.

[__] You failed to provide requested necessary information, failed to appear or refused to be available for necessary interviews or conferences; or otherwise refused to cooperate to the extent that OFCCP is unable to complete its investigation of your complaint.

[__] You refused to enter into a conciliation agreement, the terms of which OFCCP determined to be reasonable.

[__] OFCCP has made reasonable efforts to locate you and has been unable to do so. You have had at least 60 calendar days in which to respond to a notice sent to your last known address. OFCCP has closed the complaint because we are unable to proceed without your cooperation.

The issuance of this NOTICE OF RIGHT-TO-SUE concludes OFCCP processing of your complaint. If you wish to pursue your complaint further, you have the right to sue the employer named in your complaint in federal or state court. IF YOU DECIDE TO SUE, YOU MUST DO SO WITHIN 90 DAYS OF YOUR RECEIPT OF THIS NOTICE. OTHERWISE, YOUR RIGHT TO SUE IS LOST. (The time limit for filing suit based on a state claim may be different.)

An informational copy of this Notice has been sent to the following employer named in your complaint:

[*insert employer's name and address*]

For the United States Department of Labor,

_____ _____
Regional Director or Designee Date

Enclosures (2): Information Related to Filing Suit under Title VII and the ADA
Copy of Complaint

cc: [*insert name of complainant's attorney*]
[*insert name of contractor's attorney*]
[*insert name of EEOC field office contact*]

LETTER L-25: NOTIFICATION OF RESULTS OF INVESTIGATION: VIOLATION

Certified Mail, Return Receipt Requested

[Complaint No.]

[*Complainant's Name*] COMPLAINANT
[*Street Address*]
[*City, State, Zip*]

[*Company name*] CONTRACTOR
[*Street Address*]
[*City, State, Zip*]

On [*insert date*], the U.S. Department of Labor's the Office of Federal Contract Compliance Programs (OFCCP) investigated the allegation(s) of [*insert the type of discrimination*] discrimination made in the complaint of [*insert name of complainant*] filed on [*insert date*]. Our investigation has resulted in the following findings:

1. [*Insert name of contractor*] is a nonexempt government contractor subject to the requirements of [*insert one or more as appropriate:* Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended (Section 503); Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA); Title VII of the Civil Rights Act of 1964, as amended (Title VII); Title I of the Americans with Disabilities Act of 1990, as amended (ADA)].

2. [*Insert name of complainant*] is [*insert description of the relevant protected basis, e.g., applicant, employee, African-American, protected veteran, individual with a disability, lesbian, transgender, etc.*] within the meaning of [*insert one or more as appropriate:* Executive Order 11246, Section 503, VEVRAA, Title VII, the ADA] and the regulations at 41 CFR Part [*insert one or more, as appropriate:* 60-1 to 60-50, 60-300 and 60-741].

3. The complainant alleges the contractor violated its obligations under the nondiscrimination and affirmative action provisions of its federal contracts by [*insert description of the actions the complaint describes that are attributed to the employer, e.g., terminating, not promoting, not hiring, retaliation, disclosing pay, etc.*].

4. The contractor's position is that the complainant was [*insert the action taken against the complainant, e.g., terminated, not hired, etc.*] because [*insert a description of the contractor's position*].

5. Our investigation indicates [*insert all specifics details relevant to the complainant's status and the contractor's actions*].

6. The action(s) described in Paragraph 5 violated the contractor's obligations under the regulations as follows:

[*insert a list of the sections violated and describe violation*].

Under the regulations implementing [*insert as appropriate:* Executive Order 11246 at 41 CFR 60-1.24(c)(2) and Title VII at 29 CFR 1601.24, Section 503 at 41 CFR 60-741.62 and ADA at 29 CFR 1601.24, VEVRAA at 41 CFR 60-300.62], the U.S. Department of Labor's OFCCP invites [*insert name of contractor*] to resolve this matter through conciliation by informal means. A compliance officer from this office will be in contact with [*insert name of contractor*] by [*insert date*] to begin the conciliation process.

On behalf of the United States Department of Labor,

_____ _____

Regional Director or Designee Date

cc: [*insert name of the complainant's representative*]
[*insert name of the contractor's representative*]

LETTER L-26: SHOW CAUSE NOTICE: FAILURE TO SUBMIT EXECUTIVE ORDER 11246, SECTION 503 OR VEVRAA AAP(S)

(Supply & Service)

Certified Mail, Return Receipt Requested AND Electronic Mail

[*Date*]

[*Name of Establishment CEO*]
[*Title of CEO*]
[*Establishment Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear [*Name of CEO*]:

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), by letter dated [*insert date*], requested that you submit to this office within 30 calendar days a copy of your [*insert as appropriate:* establishment's or functional unit's] Affirmative Action Programs (AAPs) and itemized listing documentation prepared under our regulations implementing:

- Executive Order 11246 , as amended (41 CFR Part 60-2)
- Section 503 of the Rehabilitation Act of 1973 (Section 503), as amended (41 CFR Part 60-741)
- Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended (41 CFR Part 60-300)

We have yet to receive your [*insert as appropriate:* Executive Order 11246, Section 503 or VEVRAA] AAP(s). Due to your organization's failure to submit the requested AAP(s) required under [*insert as appropriate:* Executive Order 11246, Section 503, VEVRAA], we are issuing this Notice to Show Cause. Within 30 calendar days of receiving this Notice, you must either submit the AAP(s) and itemized listing data specified in our original request or demonstrate, in writing, why enforcement proceedings should not be initiated under [*insert as appropriate:* Sections 208 and 209 of the Executive Order 11246, as implemented by 41 CFR 60-1.26; 41 CFR 60-741.65 (Section 503) and 41 CFR 60-300.65 (VEVRAA)]. A copy of our original request is enclosed.

The submission of the AAP(s) and itemized listing data does not preclude the identification of further violations, based either upon a finding during the desk audit or subsequent on-site review, that your AAPs do not meet the requirements of 41 CFR Part 60-2, Part 60-741 or Part 60-300 or that your [*insert as appropriate:* establishment or functional unit] is not in compliance with one or more of the requirements of the Executive Order 11246, Section 503 or VEVRAA and their implementing regulations.

Should you have any questions or wish to discuss a resolution to the issues raised herein, please contact [*insert name of compliance officer*] or [*insert appropriate pronoun: his or her*] supervisor, [*insert name of supervisor*], at [*insert telephone number*] to schedule a meeting or telephone conference.

Sincerely,

[*Name of regional or district director*]
Regional Director or District Director

Enclosure

cc: [*insert name of the corporate CEO*]
[*insert name of the designated representative*]

LETTER L-27: SHOW CAUSE NOTICE: FAILURE TO SUBMIT ACCEPTABLE EXECUTIVE ORDER 11246, SECTION 503 OR VEVRAA AAP(S)

(Supply & Service)

Certified Mail, Return Receipt Requested AND Electronic Mail

[*Date*]

[*Name of Establishment CEO*]
[*Title of CEO*]
[*Establishment Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear [*Name of CEO*]:

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), reviewed your Affirmative Action Program (AAP) and itemized listing documentation prepared under [*insert one or more as appropriate:* Executive Order 11246 (Executive Order 11246), as amended; Section 503 of the Rehabilitation Act of 1973 (Section 503), as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended] and submitted for desk audit. The results of this review indicate that your AAP does not meet the requirements of our regulations at [*insert one or more as appropriate:* 41 CFR Part 60-2, 41 CFR Part 60-300 Subpart C, 41 CFR Part 60-741 Subpart C]. Consequently, we are issuing this Notice to Show Cause why enforcement proceedings should not be initiated under [*insert one or more as appropriate:* 41 CFR 60-1.26, 41 CFR 60-741.65 (Section 503) and/or 41 CFR 60-300.65 (VEVRAA)].

The specific elements of your [*insert one or more as appropriate:* Executive Order 11246, Section 503, VEVRAA] AAP(s) which do not meet the regulatory requirements cited above are listed in the enclosure. You are required to correct these violations, as indicated, within 30 calendar days of your receipt of this Notice or we shall recommend that enforcement proceedings be initiated.

Submission of a corrected [*insert one or more as appropriate:* Executive Order 11246, Section 503, VEVRAA] AAP(s) does not preclude the identification of further violations, based on a finding during the desk audit or subsequent on-site review, that your AAPs do not meet the requirements of *[insert one or more as appropriate:* 41 CFR Part 60-2, 41 CFR Part 60-300, 41 CFR Part 60-741] or that your [*insert as appropriate:* establishment or functional unit] is not in compliance with the requirements of the Executive Order 11246, Section 503 or VEVRAA and their implementing regulations.

Should you have any questions or wish to discuss a resolution to the issues raised herein, please contact [*insert name of compliance officer*] or [*insert appropriate pronoun: his or her*] supervisor, [*insert name of supervisor*], at [*insert telephone number*] to schedule a meeting or telephone conference.

Sincerely,

[*insert name of the regional or district director*]
Regional Director or District Director

Enclosure

cc: [*insert name of the corporate CEO*]
[*insert name of designated representative*]

LETTER L-27A: SAMPLE ENCLOSURE TO LETTER L-27

1. **Violation:** ABC Company's affirmative action program did not include an organizational profile required by 41 CFR 60-2.10(b)(1)(i).

   Corrective Action: Develop and include in the AAP an organizational profile that depicts staffing patterns within its establishment.

2. **Violation:** In four of the job groups identified in ABC Company's Executive Order 11246 utilization analysis as underutilized, ABC Company failed to set placement goals required by 41 CFR 60-2.15(b) or to explain why it did not do so. The job groups are Design Engineers (minority and women), Health Scientists (minorities), Electronic Technicians (women), and Tool and Die Makers (minorities and women).

   Corrective Action: In the job groups specified above, either establish goals at least equal to the availability for minorities, women or both as noted, or explain in the AAP why such goals cannot be established.

LETTER L-28: SHOW CAUSE NOTICE: FAILURE TO SUBMIT EMPLOYMENT ACTIVITY OR COMPENSATION DATA FOR DESK AUDIT

(Supply & Service Executive Order Compliance Evaluations)

Certified Mail, Return Receipt Requested AND Electronic Mail

[*Date*]

[*Name of Establishment CEO*]
[*Title of CEO*]
[*Establishment Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear [*insert name of CEO*]:

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), by letter dated [*insert date*], requested that you submit the below listed [*insert as appropriate:* employment activity or compensation] data as support data for your Affirmative Action Program (AAP) prepared under Executive Order 11246, as amended. The data was due to this office within 30 calendar days.

[*Specify the data that were not submitted for desk audit*]

The submission of this data is required by 41 CFR 60-1.12(c)(2). Additionally, 41 CFR 60-2.17(b), (c) and (d) require that your AAP include an analysis of your employment process to identify and correct problem areas. This obligation cannot be adequately fulfilled without maintenance of the referenced data.

We have not yet received the data we requested. Consequently, we are issuing this Notice to Show Cause why enforcement proceedings should not be initiated. You are required to submit the data as specified in our original request within 30 calendar days of your receipt of this Notice or we will recommend that enforcement proceedings be initiated under Sections 208 and 209 of the Executive Order 11246, as implemented by 41 CFR 60-1.26. A copy of our original request is enclosed.

The submission of these support data does not preclude the identification of additional violations, based upon a finding during the desk audit or a subsequent on-site review, that your AAPs do not meet the requirements of 41 CFR Parts 60-2, 60-741 and/or 60-300, or that your [*insert as appropriate:* establishment or functional unit] is not in compliance with the requirements of the Executive Order 11246; Section 503 of the Rehabilitation Act, as amended; or the Vietnam Era Veterans' Readjustment Assistance Act, as amended, and their implementing regulations, as appropriate.

Should you have any questions or wish to discuss a resolution to the issues raised herein, please contact [insert name of compliance officer] or [*insert appropriate pronoun: his or her*]

supervisor, [*insert name of supervisor*], at [*insert telephone number*] to schedule a meeting or telephone conference.

Sincerely,

[*insert name of the regional or district director*]
Regional Director or District Director

Enclosure

cc: [*insert name of the corporate CEO*]
[*insert name of the designated representative*]

LETTER L-29: SHOW CAUSE NOTICE: FAILURE TO SUBMIT CORRECTED EMPLOYMENT ACTIVITY AND/OR COMPENSATION DATA

(Supply & Service Executive Order Compliance Evaluations)

Certified Mail, Return Receipt Requested AND Electronic Mail

[*Date*]

[*Name of Establishment CEO*]
[*Title of CEO*]
[*Establishment Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear [*insert name of CEO*]:

On [*insert date*], the U.S. Department of Labor's Office of Federal Contract Compliance (OFCCP), contacted you by phone to request that you resubmit certain [*insert as appropriate:* employment activity or compensation] data which we determined to be unacceptable during the desk audit of your Affirmative Action Program (AAP). The desk audit of your AAP was prepared according to Executive Order 11246, as amended. We asked you to provide the corrected data within 10 calendar days. Further, we identified the unacceptable data, stated how they are unacceptable, and specified the required correction(s).

To date, we have not received the corrected [*insert as appropriate:* employment activity or compensation] data. Consequently, we are issuing this Notice to Show Cause why enforcement proceedings should not be initiated under 41 CFR 60-1.26. You are required to submit the corrected data, as specified above, within 30 calendar days of receiving this Notice or we will recommend initiating enforcement proceedings following 41 CFR 60-1.26.

The submission of these data does not preclude the identification of further violations based upon a finding during the desk audit, or subsequent on-site review, that your AAP(s) does not meet the requirements of 41 CFR Parts 60-2, 60-741, or 60-300, or that your [*insert as appropriate:* establishment or functional unit] is not in compliance or has failed to comply in the past with the requirements of the Executive Order, Section 503 of the Rehabilitation Act of 1973, as amended and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and their implementing regulations.

Should you have any questions or wish to discuss a resolution to the issues raised herein, please contact [insert name of compliance officer] or [*insert appropriate pronoun: his or her*] supervisor, [*insert name of supervisor*], at [*insert telephone number*] to schedule a meeting or telephone conference.

Sincerely,

[*insert name of the regional or district director*]

Regional Director

cc: [*insert name of the corporate CEO*]
[*insert name of the designated representative*]

LETTER L-30: SHOW CAUSE NOTICE: UNRESOLVED VIOLATIONS

(Compliance Evaluations)

Certified Mail, Return Receipt Requested AND Electronic Mail

[*Date*]

[*Name of Establishment/Construction Contractor CEO*]
[*Title of CEO*]
[*Establishment/Construction Contractor Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear [*insert name of CEO*]:

On [*insert date*], the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) sent you a Notice of Violation based on the findings of our recent compliance evaluation of your [*insert as appropriate:* establishment or functional unit].

[*If the contractor did not respond to the NOV, include the sentence: "To date, you have not responded to that Notice or otherwise indicated your willingness to remedy those violations."*]

[If the contractor did respond to the NOV, include the next two sentences: "On [*insert date*], OFCCP met with [*insert name of contractor representative*] to conciliate a resolution of the violations(s) listed in that Notice. Our conciliation efforts, however, failed to resolve the violation(s)."

Consequently, we are issuing this Notice to Show Cause. You have 30 calendar days from the date you receive this Notice to show why enforcement proceedings should not be initiated under [insert one or more as appropriate: Sections 208 and 209 of Executive Order 11246, as amended, as implemented by 41 CFR 60-1.26; Section 503 of the Rehabilitation Act of 1973, as amended, as implemented by 41 CFR 60-741.65; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, as implemented by 41 CFR 60-300-65].

A list of the violations at issue is enclosed. You are required to correct these violations, as indicated, within 30 calendar days of your receipt of this Notice or we shall recommend that enforcement proceedings be initiated.

Should you have any questions or wish to discuss a resolution to the issues raised herein, please contact [*insert name of compliance officer*] or [*insert appropriate pronoun: his or her*] supervisor, [*insert name of supervisor*], at [*insert telephone number*] to schedule a meeting or telephone conference.

Sincerely,

[*insert name of the regional or district director*]

Regional Director or District Director

Enclosure

cc: [*insert name of corporate CEO*]
[*insert name of designated representative*]

LETTER L-30A: SAMPLE ENCLOSURE TO LETTER L-30

1. **Violation:** In violation of 41 CFR 60-1.4(a)(1), ABC Company discriminated against qualified African American applicants in its hiring and selection procedures for the Laborer positions from January 1, 2018 through December 31, 2018. During this period, the qualified pool of applicants for the Laborer positions consisted of 176 white applicants and 111 African American applicants. From that pool, 17 white applicants and no African American applicants were hired. Comparison of the selection rates of white and African American applicants showed an adverse impact (0% African Americans hired) and a shortfall of six. The disparity in the selection rates is statistically significant, with a standard deviation of 3.38. Analysis of the steps in the selection process showed an adverse impact at each step in the process affecting African American applicants. ABC Company did not demonstrate that the steps in its selection process that had an adverse impact were job-related and consistent with business necessity. Absent discrimination, six African American applicants would have been selected given their representation in the qualified applicant pool.

   Corrective Action: ABC Company must agree to revise and maintain selection policies and procedures designed to eliminate unlawful disparate impact on African American applicants, and to ensure that all African American applicants are given an equal employment opportunity in its selection process.

   ABC Company must agree to provide make-whole relief to the 111 qualified African American applicants who applied for employment from January 1, 2018 through December 31, 2018. The relief covers the Laborer position and consists of employment opportunities for six qualified African American applicants, and monetary relief (including back pay, interest and benefits) to all African American applicants who can be located.

2. **Violation:** In violation of 41 CFR 60-1.4(a)(1), ABC Company discriminated against two African American female applicants who applied for promotion into Inspection jobs.

   Specifically, ABC Company was unable to provide a legitimate, nondiscriminatory reason for rejecting Sandra Jones and Barbara Rogers (African American); both applicants were better qualified under ABC Company's stated selection criteria than two similarly situated white male applicants the company selected for Inspector positions on September 23, 2018. ABC Company's reason for rejecting Ms. Jones and Ms. Rogers was pretextual and the company did not equally apply it to the two white males promoted into Inspector positions. Ms. Jones and Ms. Rogers would have been promoted into Inspector positions on September 23, 2018, but for being disparately treated.

   Corrective Action: ABC must make bona fide offers of employment to Ms. Rogers and Ms. Jones into the next two Inspector openings, and provide all wages, seniority and employment-related benefits they would have received had they not been subjected to discrimination. Such relief shall be retroactive to the date each would have been promoted absent the discrimination and shall include: (a) back pay, plus interest; (b) retroactive seniority; (c) all employment benefits; and (d) any other appropriate make-whole relief, including all wages, seniority and employment-related benefits they would have received had they not been subjected to discrimination. Additionally, ABC Company will provide Ms.

Rogers and Ms. Jones with front pay from the date this violation is resolved until they are promoted to Inspector positions or refuse bona fide promotion offers.

3. **Violation:** In violation of 41 CFR 60-2.17(c), ABC Company did not make good faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results for females and minorities in underutilized job groups.

   Corrective Action: ABC Company must agree to make good faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results for females and minorities in underutilized job groups. To accomplish this, ABC Company must agree to the following actions:

   a. ABC Company must agree to establish a working relationship with referral organizations by taking the following actions:

      - Provide regular job listings of vacancies which have not been filled internally for all underutilized job groups; and

      - Contact the referral organization within 45 calendar days of the execution of this Agreement. The purpose of the contact is to arrange for the referral of applicants, and to provide follow-up and feedback to the recruitment sources on the disposition of its referrals.

   b. ABC Company must agree to maintain documentation that demonstrates its good faith efforts.

4. **Violation:** In violation of 41 CFR 60-1.12(a), ABC Company failed to collect and maintain personnel and employment records for the appropriate period. ABC Company failed to collect and maintain documentation of the application process and selection decisions, and did not maintain all of the applications, interview notes and other applicant records.

   Corrective Action: ABC Company must agree to collect and maintain personnel and employment records for the appropriate period, including documentation of the application process and selection decisions.

5. **Violation:** ABC failed to list its jobs with the appropriate employment service delivery system, in violation of 41 CFR 60-300.5(a)(2) through (6).

   Corrective Action: ABC Company will list all suitable jobs with the Metropolis State Employment Service office. Reports to OFCCP on these listings will be required.

6. **Violation:** In violation of 41 CFR 60-300.44(f), ABC Company failed to take appropriate outreach and positive recruitment activities for protected veterans.

   Corrective Action: ABC Company must agree to take appropriate outreach and positive recruitment activities for protected veterans, and to document and evaluate the effectiveness of these activities under 41 CFR 60-300.44(f).

LETTER L-31: SHOW CAUSE NOTICE: UNRESOLVED VIOLATIONS

(Complaint Investigations)

Certified Mail, Return Receipt Requested AND Electronic Mail

[*Date*]

[*Name of Establishment/Construction Contractor CEO*]
[*Title of CEO*]
[*Establishment/Construction Contractor Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear [*insert name of CEO*]:

On [*insert date*], the U.S. Department of Labor's Office of Federal Contract Compliance Programs sent you a Notice of Results of Investigation specifying violations found during our investigation of the complaint filed by [*insert complainant's name*] against your company. On [*insert date*] we met with [*insert name of contractor representative*] to conciliate a resolution of those violations. Our conciliation efforts, however, failed to resolve the violations.

Consequently, we are issuing this Notice to Show Cause (SCN). You have 30 calendar days from the date that you received this SCN to show why enforcement proceedings should not be initiated under [*insert one or more as appropriate:* Sections 208 and 209 of Executive Order 11246, as amended, as implemented by 41 CFR 60-1.26; Section 503 of the Rehabilitation Act of 1973, as amended, as implemented by 41 CFR 60-741.65; and/or of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, as implemented by 41 CFR 60-300.65].

The violations at issue are listed in the enclosure. You are required to correct these violations within 30 calendar days of your receipt of this Notice or we shall recommend the initiation of enforcement proceedings.

Should you have any questions or wish to discuss a resolution to the issues raised herein, please contact [*insert name of compliance officer*] or [*insert appropriate pronoun: his or her*] supervisor, [*insert name of supervisor*], at [*insert telephone number*] to schedule a meeting or telephone conference.

Sincerely,

[*insert name of the regional or district director*]
Regional Director or District Director

Enclosure

cc: [*insert name of corporate CEO*]
[*insert name of designated representative*]

LETTER L-32: AMENDED SHOW CAUSE NOTICE FOR UNRESOLVED VIOLATIONS

(Compliance Evaluations)

Certified Mail, Return Receipt Requested AND Electronic Mail

[*Date*]

[*Name of Establishment/Construction Contractor CEO*]
[*Title of CEO*]
[*Establishment/Construction Contractor Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear [*insert name of CEO*]:

On [*insert date*], the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), issued your company a Notice to Show Cause which listed specific violations of [*insert one or more as appropriate:* Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973 (Section 503), as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended] and offered you 30 calendar days in which to show why enforcement should not be initiated.

We have completed our subsequent review of your company's equal employment opportunity policies and practices. [*Insert this sentence if the contractor is a construction contractor:* "Our review was of your construction work sites in the [*insert name of geographic area.*"]] Additional violations of the [*insert one or more as appropriate:* Executive Order 11246, Section 503, VEVRAA] were identified.

Consequently, we are issuing this Amended Notice to Show Cause. You have 30 calendar days from the date you receive this Notice to show why enforcement proceedings should not be initiated under [*insert one or more as appropriate:* Sections 208 and 209 of the Executive Order 11246, as implemented by 41 CFR 60-1.26; Section 503, as implemented by 41 CFR 60-741.65; and/or VEVRAA, as implemented by 41 CFR 60-300.65].

The enclosure lists the most recently identified violations, along with those specified in the [*insert date*] Notice to Show Cause. You are required to correct these violations, as indicated, within 30 calendar days of your receipt of this Notice or we shall recommend that enforcement proceedings be initiated.

Should you have any questions or wish to discuss a resolution to the issues raised herein, please contact [*insert name of compliance officer*] or [*insert appropriate pronoun: his or her*] supervisor, [*insert name of supervisor*], at [*insert telephone number*] to schedule a meeting or telephone conference.

Sincerely,

[*insert name of the regional or district director*]
Regional Director or District Director

Enclosure

cc: [*insert name of corporate CEO*]
[*insert name of designated representative*]

LETTER L-33: SHOW CAUSE NOTICE FOR DENIAL OF ACCESS

(Compliance Evaluations & Complaint Investigations)

Certified Mail, Return Receipt Requested AND Electronic Mail

[*Date*]

[*Name of Establishment/Construction Contractor CEO*]
[*Title of CEO*]
[*Establishment/Construction Contractor Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear [*insert name of CEO*]:

In our letter dated [*insert date*], the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), requested that [*insert contractor or establishment name*]:

[*CHOOSE ONE OR BOTH OF THE FOLLOWING OPTIONS*]

(1) Submit to the on-site portion of a [*compliance evaluation or complaint investigation*] as described at [*insert one or more as appropriate:* 41 CFR 60-1.20(a)(1)(ii), 41 CFR 60-741.60, 41 CFR 60-300.60] at its [*facility or construction work site(s)*] located at [*street address, city, state*]. The on-site was to begin on [*insert date*].

[*and/or*]

(2) Submit records requested by OFCCP, under [*insert one or more as appropriate:* 41 CFR 60-1.43, 41 CFR 60-300.81, and 41 CFR 60-741.81].

On [*insert date*], your representative, [*insert name*], responded to our request by denying access to [*the facility, construction work site(s) and/or records*]. Consequently, we are issuing this Notice to Show Cause why enforcement proceedings should not be initiated under [*insert one or more as appropriate:* Sections 208 and 209 of Executive Order 11246 , as amended, as implemented by 41 CFR 60-1.26; Section 503 of the Rehabilitation Act of 1973 (Section 503), as amended, as implemented by 41 CFR 60-741.64; the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended; as implemented by 41 CFR 300.65].

[*CHOOSE ONE OR BOTH OF THE FOLLOWING OPTIONS*]

(1) [*Insert contractor's name*] is required to allow OFCCP access to the [*facility or construction work site(s)*] so that we can conduct an on-site [*compliance evaluation or complaint investigation*] of your [*facility or construction work site(s)*] located at [*insert location*] within 30 calendar days of your receipt of this Notice or we shall recommend that enforcement proceedings be initiated in accordance with the above citations. In those proceedings, you will have an opportunity to request a hearing before any sanctions are imposed.

[*and/or*]

(2) [*Insert contractor's name*] is [*also*] required to allow OFCCP access to records requested for purposes of its [*compliance evaluation or complaint investigation*].

Allowing OFCCP access to the [*facility, construction work site(s), or records and other information*] to conduct the [*compliance evaluation or complaint investigation*] does not preclude the identification of further violations, based either upon a finding during the desk audit or subsequent on-site review, that your AAPs do not meet the requirements of 41 CFR Part 60-2, Part 60-741 and Part 60-300, or that your establishment is not in compliance or has failed to comply in the past with the requirements of the Executive Order 11246, Section 503 and VEVRAA, and their implementing regulations. We will not withdraw this Notice to Show Cause until all deficiencies cited in this Notice (or subsequently identified in an Amended Show Cause Notice incorporating any additional violations found during the desk audit or on-site review) have been fully and satisfactorily resolved in a written Conciliation Agreement.

We wish to avoid enforcement proceedings, if possible. Therefore, you are asked to contact [*insert name of compliance officer*] at [*insert phone number*] within five business days of receipt of this Notice to arrange a mutually acceptable time to conciliate a resolution of this violation.

Sincerely,

[*Name of regional or district director*]
Regional Director or District Director

Enclosure

cc: [*insert name of corporate CEO*]
[*insert name of designated representative*]

LETTER L-34: RESCISSION OF AN ERRONEOUSLY ISSUED SHOW CAUSE NOTICE

Certified Mail, Return Receipt Requested AND Electronic Mail

[*Date*]

[*Name of Establishment/Construction Contractor CEO*]
[*Title of CEO*]
[*Establishment/Construction Contractor Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear (*insert name of CEO*):

On (*insert date*), the U.S. Department of Labor's Office of Federal Contract Compliance Programs issued a (*insert as appropriate:* Notice to Show Cause or Amended Notice to Show Cause) to your company. That Notice gave you 30 calendar days to show why enforcement proceedings should not be initiated under (*insert one or more as appropriate:* Sections 208 and 209 of Executive Order 11246, as amended, as implemented by 41 CFR 60-1.26; Section 503 of the Rehabilitation Act of 1973, as amended, as implemented by 41 CFR 60-741.65; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, as implemented by 41 CFR 60-300.65).

After issuing the Notice, we subsequently determined that it was erroneously issued because (*insert as appropriate:* your company has demonstrated that it is exempt from our requirements or your company demonstrated that the allegations giving rise to the Notice are incorrect). Therefore, we are rescinding the (*insert as appropriate:* Notice to Show Cause or the Amended Notice to Show Cause).

Sincerely,

(*Name of regional director*)
Regional Director

cc: (*insert the name of the corporate CEO*)
(*insert the name of the designated representative*)

LETTER L-35: PREDETERMINATION NOTICE

Note: To be mailed by certified mail, return receipt requested.

[*Date*]

[*Name of CEO*]
[*Title of CEO*]
[*Company name*]
[*Street Address*]
[*City, State, Zip Code*]

Re: Compliance Evaluation of (*insert name of contractor*)
OFCCP No. _____

Dear [*insert name of CEO*]:

On (*insert date*), the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) began a compliance evaluation of (*insert name of contractor*) to review compliance with Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973 (Section 503), as amended; and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended; and their implementing regulations at 41 Code of Federal Regulations (CFR) Chapter 60. (*Insert name of contractor*), hereinafter referred to as the "contractor," is a federal contractor under Executive Order 11246, Section 503 and/or VEVRAA, and their implementing regulations at 41 CFR Chapter 60.

The purpose of this Notice is to inform you of the findings which, if not adequately rebutted, will establish that discrimination occurred (or is occurring) at the contractor's establishment.

(Present the evidence of discrimination.)

(If there are additional violations or deficiencies, including technical violations, present them here.)

Please be advised that this is a preliminary determination based on available information. You now have the opportunity to provide additional information or documentation that you believe we should consider before a final determination is made.

We ask that you respond to this Notice within 15 calendar days from receipt of this letter. If you do not respond, we will incorporate the preliminary finding(s) made in this Notice into a final Notice of Violation (NOV). You will receive the NOV by certified mail. If you have any questions, please call Compliance Officer, (*insert name of compliance officer*), or his or her immediate supervisor, (*insert name of district director or assistant district director*), at (*insert district office or regional office phone number*).

Sincerely,

(*insert name of the district director or assistant district director*)
District Director

cc: [*insert name of the head of establishment/construction contractor official over the geographical area under review*]
[*insert name of the designated representative*]

LETTER L-36: NOTICE OF VIOLATION

Note: To be mailed by certified mail, return receipt requested.

[*Date*]

[*Name of CEO*]
[*Title of CEO*]
[*Company name*]
[*Street Address*]
[*City, State, Zip Code*]

Re: Compliance Evaluation of (*insert name of contractor*)
OFCCP No. _____

Dear [*insert name of CEO*]:

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is reviewing [*insert name of contractor*] compliance with one or more of these authorities and their implementing regulations at 41 CFR Chapter 60: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973 (Section 503), as amended; or the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended.

The review indicates that [*insert name of contractor*] is not in compliance with [*insert one or more of the following:* Executive Order 11246, Section 503, and/or VEVRAA.] Consequently, we are issuing this Notice of Violation. The violation(s) and corrective action(s) needed are set forth below:

A. VIOLATION(S):

(List and describe the violations)

B. CORRECTIVE ACTION(S):

(After each violation describe the needed corrective actions)

To come into compliance, [*insert name of contractor*] must enter into a binding Conciliation Agreement with OFCCP that encompasses all of the corrective actions described above. It is our sincere desire to avoid enforcement proceedings. Therefore, we ask that you contact (*insert assistant district director name here*], or compliance officer [*insert name here*], or me within five business days of receiving this letter at [*insert office phone number*] to begin conciliation and resolution of the specified violations.

Sincerely,

[*Name of district director*]
District Director

cc: [*insert name of the head of the establishment*]
[*insert name of the designated representative*]

LETTER L-37: 15-DAY NOTICE: VIOLATION OF A CONCILIATION AGREEMENT

Certified Mail, Return Receipt Requested AND Electronic Mail

[*Date*]

[*Name of Establishment/Construction Contractor CEO*]
[*Title of CEO*]
[*Establishment/Construction Contractor Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear [*insert name of CEO*]:

On [*insert date*], the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), entered into a Conciliation Agreement (CA) with your company. The CA sets forth your company's specific commitments to remedy violations found during a [*insert as appropriate:* compliance review or complaint investigation].

We completed a review of your compliance with the CA on [*insert date*] that indicates that your company failed to comply with commitments outlined in the CA. The facts and circumstances of each violation of the CA are outlined in the enclosure.

Accordingly, under the CA referenced above [insert one or more as appropriate: and 41 CFR 60-1.34, 41 CFR 60-300.63 and 41 CFR 60-741.63], you have 15 calendar days from the date you received this Notice to demonstrate that you are in compliance with the specified provisions of the CA. You may demonstrate your compliance through a written presentation of facts and evidence. However, if you fail to do so within the specified period, we will recommend the initiation of enforcement proceedings under 41 CFR [*insert as appropriate:* 60-1.26, 60-300.65 or 60-741.65]. Should this matter proceed to enforcement, you will have an opportunity for a hearing before any sanctions are imposed.

Should you have any questions or wish to discuss this matter, please contact [*insert name of compliance officer*] or [*insert appropriate pronoun: his or her*] supervisor, [*insert name of supervisor*], at [*insert telephone number*].

Sincerely,

[*insert name of the regional director*]
Regional Director

Enclosure

cc: [*insert name of the corporate CEO*]
[*insert name of the designated representative*]

LETTER L-37A: SAMPLE ENCLOSURE TO LETTER L-37

Remedy: Provide affected class members an opportunity to bid on any position in the Finishing Department, utilizing their company seniority.

Facts and Circumstances: An examination of bid postings and interviews with Finishing Department supervisors and affected class members indicates that the employees that were discriminated against were allowed to bid only on entry-level positions in the Finishing Department. The company continues to use job seniority, instead of company seniority, when determining the successful bidders for positions above the entry-level.

LETTER L-38: RESCISSION OF THE 15-DAY NOTICE

Certified Mail, Return Receipt Requested AND Electronic Mail

[*Date*]

[*Name of Establishment/ Construction Contractor CEO*]
[*Title of CEO*]
[*Establishment/ Construction Contractor Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear [*Name of CEO*]:

On [*insert date*], the U.S. Department of Labor's Office of Federal Contract Compliance Programs issued your company a 15-Day Notice under [*insert as appropriate:* 41 CFR 60-1.34, Executive Order 11246, as amended; 41 CFR 60-741.63, Section 503 of the Rehabilitation Act of 1973, as amended; and 41 CFR 60-300.63, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended]. We received your written reply on [*insert date*] and it stated that the allegations giving rise to the Notice were incorrect.

We examined the evidence you presented and concluded that the allegations are, in fact, incorrect. Therefore, we are rescinding the 15-Day Notice.

Sincerely,

[*Name of regional director*]
Regional Director

cc: [*insert name of corporate CEO*]
[*insert name of designated representative*]

LETTER L-39: PROGRESS REPORT RESPONSE LETTER

[*Date*]

[*Name of CEO*]
[*Title of CEO*]
[*Company Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear [*insert name of CEO*]:

On [*insert date*], the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) received your progress report under a [*insert as appropriate:* Conciliation Agreement or insert the name of the report causing the progress report] entered into by [*insert name of contractor*] on [*insert date*].

The terms of the [*insert as appropriate:* Conciliation Agreement or the name of the appropriate report] require that [*insert name of contractor*] submit certain items as a part of its progress report. Your submission must include [*list items required here*] and you provided the below listed items.

[*List items submitted*]

This office reviewed and conducted the appropriate analyses on [*insert the date analysis done*] on the items you submitted. [*Explain whether the progress report is acceptable or whether the CO needs additional information.*]

[*Insert one of the below paragraphs as appropriate*]

<u>#1: Use if it is a final progress report:</u>

This is your final progress report. However, as long as [*insert contractor name*] is a federal contractor, [*insert contractor name*] is required to comply with all regulatory provisions of Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973 (Section 503), as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended; and implementing regulations at 41 CFR Chapter 60.

<u>#2: Use if it is an interim progress report:</u>

This is not a final progress report. Therefore, we remind you that the next progress report is due on [*insert date*]. As long as [*insert contractor name*] is a federal contractor, [*insert contractor name*] is required to comply with all regulatory provisions of Executive Order 11246, Section 503, VEVRAA and implementing regulations at 41 CFR Chapter 60.

If you have any questions, please contact [*insert name of compliance officer*], compliance officer, at [*insert contact information*] to schedule a meeting or telephone conference.

Sincerely,

[*insert name of the District Director or Assistant District Director*]
District Director or Assistant District Director

cc: [*insert the name of the corporate CEO*]
[*insert the name of the designated representative*]

LETTER L-40: CLOSURE LETTER FOR SUBSTANTIVE VIOLATIONS

(Where a Show Cause Notice was Issued)

Certified Mail, Return Receipt Requested AND Electronic Mail

[*Date*]

[*Name of Establishment/Construction Contractor CEO*]
[*Title of CEO*]
[*Establishment/Construction Contractor Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear [*insert the name of CEO*]*:*

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) recently completed a compliance evaluation of your equal employment opportunity policies and practices at [*insert as appropriate: establishment or construction work sites*] in the [*insert name of the geographic area*].

On [*insert date*], based on violations found during the evaluation, we issued your company a [*insert one or more as appropriate:* Notice to Show Cause or Amended Notice to Show Cause]. Based on this notice, you had 30 calendar days to show why OFCCP should not initiate enforcement proceedings under [*insert one or more as appropriate:* Sections 208 and 209 of Executive Order 11246, as amended, as implemented by 41 CFR 60-1.26; Section 503 of the Rehabilitation Act, as amended, as implemented by 41 CFR 60-741.65; or the Vietnam Era Veterans' Readjustment Assistance Act, as amended, as implemented by 41 CFR 60-300.65].

However, on [*insert date*], representatives of your company and this office reached a Conciliation Agreement that addresses each of the violations cited in the [*insert as appropriate:* Notice to Show Cause or Amended Notice to Show Cause].

Subject to the implementation of commitments detailed in the Conciliation Agreement dated [*insert date*], this office determined that no other apparent violations of the laws that OFCCP enforces exist. The Conciliation Agreement is effective as of the day it is signed by the Regional Director.

This determination does not preclude a future determination of noncompliance based on a finding that the commitments in the Conciliation Agreement are insufficient to achieve compliance.

Sincerely,

[*Name of district director*]
District Director

cc: [*insert name of the corporate CEO*]
[*insert name of designated representative*]

LETTER L-41: CLOSURE LETTER FOR SUBSTANTIVE VIOLATIONS

(No Show Cause Notice Issued)

Certified Mail, Return Receipt Requested AND Electronic Mail

[*Name of Establishment/Construction Contractor CEO*]
[*Title of CEO*]
[*Establishment/Construction Contractor Name*]
[*Street Address*]
[*City, State, Zip Code*]

Dear [*insert name of CEO*]:

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) recently completed a compliance evaluation of the equal employment opportunity policies and practices at your (*insert as appropriate:* establishment or construction work sites) in the (insert name of the geographic area).

Subject to the implementation of commitments detailed in our Conciliation Agreement dated (*insert date*), this office determined that no other apparent violations of the regulations that OFCCP enforces exist. The Conciliation Agreement is effective as of the day it is signed by the regional director. If OFCCP takes no action to modify the Conciliation Agreement within the timeframe provided, the agreement is deemed approved.

This determination does not preclude a future determination of noncompliance based on a finding that the commitments in the Conciliation Agreement are insufficient to achieve compliance.

Sincerely,

(*Name of regional director*)
Regional Director

Enclosure

cc: [*insert name of the corporate CEO*]
[*insert name of the designated representative*]