

Best Practices for Being Prepared for an OFCCP Compliance Review (Audit)

OFCCP is focusing on both technical compliance as well as looking for systemic discrimination

- **Be prepared**
 - Have your AAPs updated and in place by anniversary date
 - Start updating numerical reports and narrative 30 to 45 days prior to anniversary date
 - Prepare adverse impact analyses as soon as possible after anniversary date
 - Timely submissions
 - After getting notice of audit from OFCCP (scheduling letter) be prepared to submit on time.
 - Contractors are less likely to get extensions (maybe five days as compared to two weeks or more in the past)
- **Changing scope of audits**
 - The Active Case Management Directive is being repealed
 - OFCCP is not just looking for systemic discrimination with large disparities
 - ACM required disparity of at least 10 women/minorities to pursue
 - Most audits in past closed at initial desk audit phase
 - Expect more on-site audits
 - 200 staff hired or being hired
 - Intent on looking at variety of issues including outreach, compensation
- **Items to submit in an audit**
 - AAP for Women and Minorities
 - AAP for Disabled Workers and Veterans
 - Progress Towards Goals
 - Employment Transactions including applicants and selections, and terminations
 - Compensation data (aggregated)
- **In the past top priority was the applicant data**
 - OFCCP focused their time and efforts in this area with adverse impact analysis
 - This is also where the contractor's potential liability exists
 - How are your dispositions and statuses?
 - Do you have the necessary data to prepare a component analysis if you have adverse impact for the bottom line analysis?
 - What individual protected groups? (Not just total minorities.
 - What about non-minorities and men?
 - Now everything in your AAP and submission is subject to review
- **Go through all items for submission and make sure you have documentation in place**
 - AAP for Women and Minorities
 - Have you done what you promised in writing?
 - Can you document what you have promised to do in the AAP?
 - AAP for Disabled Workers and Veterans
 - Again can you document what you have promised, such as
 - Training meetings
 - Outreach efforts to disabled and veteran organizations
 - Listing openings with state employment agency
 - Employment Transactions - Item 10
 - Do you have the data?
 - Is it organized?
 - Do you have a record of the dispositions for each and where in the process they ended up?
 - Could you do a component analysis if you had to? Do you know what to do?

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- If you are six months or more into the current AAP year can you obtain the first six months of applicant and selection data?
- Could you identify the qualifications for each vacancy and the screening/selection process? Could you explain this to a judge?
- Analyze the data before submitting to the OFCCP
- Be aware OFCCP looking at various slices
 - Sub-minority groups
- Using tests? Do you have validation study?
- Item 11 and Compensation
 - No trigger test (30-10-3) so District Offices have more discretion
 - Look at data by job title (use of endorsed by Dr. Kaiser)
 - Consider doing at least basic calculations of averages by job title by race/ethnicity and by gender
 - client/attorney privilege
 - be ready to act upon results after additional research
 - OFCCP not just looking at systemic discrimination
 - Reminder - Guidelines to be rescinded
 - Cohorts, as few as four or five factors (but use as many as necessary to explain and group cohorts)
- Vets/Disabled
 - Outreach and good faith efforts
 - Document everything; document Listing of jobs, meetings, outreach
 - VETS-100/100A – False Claims Act
 - Checklist from OFCCP Midwest Region (see attachment)
- Progress Towards Goals
 - What are your good faith efforts for established goals?
 - How has this been documented?
- Companywide systems/policies/tests – if issue be sure to address companywide
- I-9s audited? how recently has this been done?