

OFCCP Resumes Sending Notices of Compliance Evaluations to Contractors

Agency Initiates New Contractor Selection System Based on 'Likelihood of Discrimination' Measurement

For the first time in several months, the Office of Federal Contract Compliance Programs (OFCCP) resumed sending out notices to federal contractors informing them that they have been selected for Compliance Evaluations (audits).

The agency sent out approximately 600 "regular" Scheduling Letters during the first quarter of the fiscal year (October 1- September 30), and expects to have additional waves of Scheduling Letters going out in subsequent quarters. OFCCP also sent out approximately 1,700 notification letters to companies under its new Federal Contractor Selection System (FCSS).

These were the first audit notices sent out since the agency declared a moratorium on initiating new compliance evaluations last April. The pause in audit activity was supposed to last only two months to give the agency time to transition to a new targeting model for selecting contractors for audits.

Development of the FCSS

The new Federal Contractor Selection System was developed by OFCCP to be used as a tool for selecting contractors for audits. Consistent with the agency's systemic discrimination enforcement strategy, the FCSS uses a new analytical process to evaluate contractor workforce data to predict whether systemic discrimination likely exists. (OFCCP's previous system for selecting contractors for audits, the Equal Employment Data System (EEDS), was not very effective in identifying systemic discrimination patterns.) The results of this new analytical process will produce a "likelihood of discrimination" measurement that will "rank" contractors. Those with the highest ranking will be the first to be targeted for compliance evaluations under this new system.

The precise formulas for how the new targeting model and process works have not been revealed by the agency, but the general information used in the analysis to evaluate each contractor establishment workforce has been disclosed:

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Deadline Approaches Mandating the Use of Census 2000 Data for AAP Availability Analysis

Earlier this year OFCCP published a notice informing contractors that the agency will expect data from the Census 2000 Special EEO File to be used for affirmative action plans with a beginning date on or after **January 1, 2005**. As this date nears, companies need to make plans to ensure that they will be able to access the required data so that their AAPs will be in compliance.

Availability Analysis

One of the requirements of an affirmative action plan is determining an estimate of the availability of qualified minorities and women in the labor force. The availability estimate is used as a benchmark for comparison of the contractor's workforce profile regarding the representation of minorities and women. In determining availability, OFCCP's regulations require that contractors "... use the most current and discrete statistical information available to derive availability figures." [41 CFR 60-2.14(d)]. OFCCP considers the Census 2000 data to be the most current data available, and will use that data to evaluate the reasonableness of a contractor's availability determinations for AAPs beginning on or after January 1, 2005. Thus, contractors that use Census data for determining availability may no longer use the data from the 1990 Census for AAPs beginning in 2005.

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Gerstco's 2005 Calendar

January 20	EEOCC Breakfast Meeting
February 3 & 4	AAP Basics Workshop
March 17	AAP Best Practices Industry Forum
April 7 & 8	AAP Strategic Implementation Workshop
May 19	EEOCC Breakfast Meeting
September 15	EEOCC Breakfast Meeting
October 20 & 21	AAP Strategic Implementation Workshop
November 17	EEOCC Breakfast Meeting
December 1 & 2	AAP Basics Workshop

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- The model analyzes the establishment workforce profile; currently, 2002 EEO-1 report data is being used.
- The establishment workforce profile is compared to those of other contractors in the same industry, based on the four-digit Standard Industrial Classification (SIC) industry code. (Under the previously used EEDS system, this comparison was made based on a three-digit industry code; thus, this model should make a more specific comparison).
- The model also compares the establishment workforce data to data from the 2000 Census for the establishment's Metropolitan Statistical Area (MSA).
- Each of the factors and the comparisons are weighted to produce a "likelihood of discrimination" measurement that is assigned to the contractor establishment.

Using this new targeting model, approximately 1,700 letters were sent out beginning November 1st to corporate CEOs notifying them that they have been scheduled for compliance evaluations during OFCCP's 2004-2005 fiscal year. Under this new system over 3,600 contractor establishments have been identified for potential audits during this fiscal year.

FCSS Notification Process

Along with the new targeting process is a new notification process. Contractors targeted for compliance evaluations under the FCSS will receive a "notification letter" from OFCCP. (The text of the notification letter follows this article.) The notification letter will be sent to the company CEO, informing him or her that one or more of the company's establishments have been selected for potential scheduling of a compliance evaluation. The letter identifies the selected establishments, and explains that the establishments may receive a Scheduling Letter at some time during the next 12 months. Also contained in the letter is an explanation of the agency's rationale for developing the new system, and the FCSS process.

In this compliance evaluation targeting and selection process, OFCCP has taken steps to minimize the burden on contractors. The agency will limit to 25 the number of compliance evaluations that any company would undergo during the agency's fiscal year. In addition, the scheduling of the compliance evaluations for a company will be staggered over a period of time so as not to overwhelm a company with multiple audits at the same time.

What Should Contractors Be Doing?

There are several steps companies should take to be prepared in the event of an audit notification from OFCCP:

- Disseminate the information about OFCCP's activities to those responsible for implementing the company's affirmative action plan.
- Alert the CEO & facility managers to be on the lookout for OFCCP's notification letter of Scheduling Letter.
- Consider conducting a self-audit to insure that the AAP and supporting documentation and records are ready for an OFCCP audit.
- Take steps to insure that the data necessary for updating calendar-year AAPs will be available in a timely manner, and the plan(s) can be completed and ready for desk audit submission in the event of an OFCCP notification in January 2005.

See New FCSS Notification Letter on Page 3

How Do You Develop an Affirmative Action Plan?

Learn How at the AAP Basics Workshop in February 2005

In this intensive two-day workshop, participants will get 'hands-on' experience developing Affirmative Action Programs (AAPs) that comply with federal guidelines. Basic requirements for preparing and implementing federal contractor Affirmative Action Programs will be addressed, including policies necessary for compliance.

Lectures on each topic, followed by a period of time for participants to work on developing that part of the AAP will be used. Consulting services will be provided to each participant by the program faculty who are experienced EEO AAP professionals. Templates and spreadsheets for AAP reports and analyses will be available to participants. Because of the nature of the workshop, class size is limited. Participants should bring a laptop computer, company workforce data and other information regarding employment processes to achieve the goal of producing an AAP during the Workshop.

FCSS Notification Letter

August 19, 2004

Company Name

Dear Federal Contractor:

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) is informing you that one or more of your establishments have been selected for potential scheduling of a compliance review under the Federal Contractor Selection System (FCSS), formerly referred to as the Equal Employment Data System (EEDS). This letter provides a listing of the selected establishments which you can forward to the identified establishments and to the pertinent management officials of any business entities affiliated with the establishments listed in this letter. As each establishment is scheduled for a review we will provide the establishment with notice under established OFCCP scheduling procedures; this is not a scheduling letter.

As of July 2004, the OFCCP designed and implemented a new FCSS. The new system for this cycle selected 3,560 establishments for possible compliance reviews. At this time, OFCCP anticipates that reviews will be scheduled for all selected establishments within the next 12 months; however, based on the findings from these reviews and available resources, some of these reviews may not occur until later or will be dropped from the scheduling list for this cycle. When we have completed this cycle, we will inform you of any new selections in a similar manner and any additional changes in the selection process. Questions about the compliance review process should be directed to your regional OFCCP office. Contact information and compliance assistance information can be found at the OFCCP Compliance Assistance Calendar Web Page – <http://www.dol.gov/esa/ofccp/Calendars/caevents.htm> and the OFCCP Compliance Assistance Web Page Link — <http://www.dol.gov/esa/regs/compliance/ofccp/ofccpcomp.htm>

The new FCSS replaces the prior EEDS methodology in an effort to improve the accuracy of the selection process and to reduce the burden to larger multi-establishment contractors. The new system is considered by the OFCCP to be a trial system that is subject to change in future cycles of the FCSS based on new and existing research studies. The system is based on external research conducted by Westat, a firm recognized for their expertise in data collection and analysis. Unlike prior OFCCP systems that were developed internally by OFCCP without the benefit of a systematic study, the new system draws upon Westat's thorough analysis of data from ten years of OFCCP compliance reviews. Westat used such data to formally identify and characterize relationships between reported EEO-1 workforce profiles and historical OFCCP findings of discrimination. Specifically, the new model compares the workforce profile of contractor establishments to others in the same industry and to the profile of the local labor market supply as obtained from 2000 Census data. We have applied the Westat mathematical model that defines these relationships to basically rank contractor establishments on their likelihood of discrimination. In comparison to the prior EEDS methodology, our initial analysis and that from Westat indicates that the new model should be substantially better in targeting establishments with discrimination. To validate the model, we plan to conduct compliance reviews under the new FCSS starting with a pilot sample of approximately 700 top ranked establishments, assess the system, and proceed accordingly.

The new system also addresses problems with simultaneous, multiple compliance reviews arising out of the recent and significant increase in the number of compliance reviews scheduled by OFCCP. Under the new system, we have limited the number of establishments per contractor to be scheduled per year to no more than 25. For this cycle, and to the extent possible, we will attempt to limit reviews among corporate affiliated establishments to 25 including any reviews that were open as of March 2004. We have staggered the scheduling process so that several reviews are not conducted at the same point in time for any corporations with multiple establishments. Lastly, OFCCP will give serious consideration to any remedial action voluntarily undertaken by that particular establishment prior to the conduct of an OFCCP review for both small and large contractors where compliance deficiencies have been identified through self-audits conducted by any of your establishments. Such remedial action may mitigate any relief sought by OFCCP, to the extent the remedial action completely corrects the problem(s) at issue.

Sincerely,

Charles E. James, Sr.

Deputy Assistant Secretary for Federal Contract Compliance

Listing of Establishments Selected for the 2004 FCSS.

Establishment Name	Location	Contact Phone Number E-Mail Address
	Address, City, State and Zip	

Deadline Approaches . . . continued from page 1

Census 2000 Special EEO File Data

Accessing the data from the Census 2000 Special EEO File is a two-step process. There are 471 occupation codes in the Census, and a company's job titles first have to be "mapped" to an appropriate occupation code. This is accomplished by matching the company's job titles and skill requirements with the job titles covered by each Census occupation code. Next, the company needs to define the geographic area (counties, cities, MSAs, etc.) that is the "reasonable recruitment area" for filling their job openings. Then, the availability data is obtained by searching the Special EEO File based on the combinations of occupation codes and geographic areas.

Gerstco's Software Products Offer a Solution

Contractors can more easily meet the requirement to use the Census 2000 data for developing affirmative action plans by utilizing Gerstco's software tools, the Census Job Title Mapper, and CENSBase.

Census Job Title Mapper contains a brief description of job types & skills required for each of the 471 occupations codes in the Census 2000 Special EEO File. By using a key word search function, company job titles can be accurately and quickly mapped to the Census 2000 occupation codes.

After job titles are mapped and recruitment areas are defined, using CENSBase will allow you to quickly access the Census 2000 Special EEO File to determine the estimated availability for minorities and women in **four easy steps on a single screen**. CENSBase contains the entire Census 2000 Special EEO File, organized by race, gender, geography, industry, earnings, and by residence or workplace. It can be used as a stand-alone tool, or in conjunction with AAPBase 2005, Gerstco's software for AAP Planning.

For information about our products visit our web site at www.gerstco.com.

Test Drive AAPBase 2005 or CENSBase Software – FREE!

Software users can now test drive the new AAPBase 2005 AAP development software and/or CENSBase software for calculating external availability factors using Census 2000 data. Get ready for 2005 and call now to request your test drive copy of AAPBase 2005 and/or CENSBase.

“AAP Best Practices” Industry Forum Scheduled for November 30, 2004

Gerstco's 2004 EEOCC Breakfast Meetings will conclude on November 30, 2004 with a special "AAP Best Practices Forum" for EEO AAP Professionals. This one-of-a-kind forum will feature speakers focusing on:

- **Building Internal Management Support for the AAP Process** (Adobe Systems and Veritas Software)
- **Getting Through an OFCCP Desk Audit** (Cisco Systems, Inc.)
- **Managing the AAP Process in a Restructuring Environment** (DHL Holdings)

The AAP Best Practices Industry Forum is an opportunity for HR and EEO AAP professionals to learn and share information with each other on subjects such as supporting the AAP process, developing meaningful action plans to achieve AAP goals, and monitoring the entire program to make sure that established processes are working and being maintained.

“AAP Best Practices Industry Forum”

When: November 30, 2004

Where: San Jose State Professional Development Center

Time: 8:30 am to 11:00 am

To register for this very relevant and timely event, please contact April Spence-Pruitt, at 408 973-1366, ext. 201, or visit our web site at www.gerstco.com to register on-line.

Remember to Use Gerstco's Customer Connection to Securely Send Data Files

A new Gerstco Customer Connection Extranet is now on our website. Users are telling us it is an easy and secure way to exchange data files. Data sent via Gerstco's Extranet is automatically encrypted using Verisign technology. A Document Exchange feature is used to receive electronic AAPs and other project reports.

Subscriptions to the Customer Connection are at no charge to Gerstco customers and \$49.95 for other EEO AAP professionals. Visit www.gerstco.com to subscribe online or learn more about this unique EEO AAP online resource.