

# OFCCP and EEOC Update

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September 19, 2008

## OFCCP News

- Due to the upcoming change in the administration, all political appointees to the OFCCP will be leaving office by January 2009 regardless of who wins the presidency in November.
- Scheduling letters are due to be released in the second week of October 2008 for approximately 2,500 establishments. The second release will take place in March 2009 for an additional 5,000 establishments.
- One in every 50 of the upcoming scheduling letters will include language regarding a mandatory on-site review of establishments selected for a desk audit as a quality control measure for the OFCCP compliance officers.

## OFCCP Initiatives

July 24, 2008 – Two initiatives were announced by the OFCCP regarding the protection of the rights of applicants with disabilities and the hiring of veterans. These initiatives are “Ensuring the Accessibility of Online Application Systems” and “The Good Faith Initiative for Veterans Employment (G-FIVE),” the full text of which are available in Directives 281 and 282, respectively.

### **Ensuring the Accessibility of Online Application Systems**

Directive 281 sets forth the immediately effective policy of the OFCCP to include in all compliance evaluations “a review of the contractor’s online application systems to ensure that the contractor is providing equal opportunity to qualified individuals with disabilities and disabled veterans.” The OFCCP will also determine in the review whether contractors are providing reasonable accommodation when using their online application system and the process for obtaining accommodation.

### **The Good Faith Initiative for Veterans Employment (G-FIVE)**

Directive 282 discusses the G-FIVE initiative including the evaluation factors, processes, and procedures for implementation. Based on a full compliance review, contractors and sub-contractors with the federal government may receive a G-FIVE rating from the OFCCP for demonstrating outstanding achievements in the employment of covered veterans. Contractors and sub-contractors may also self-nominate their facility for consideration for a G-FIVE rating based on a full compliance review. Approved G-FIVE contractors will be recognized on the OFCCP web site in a “Best Practices” section and be exempted from audit reviews for three years.

## Clarification on EEO-1 Reporting in AAPs

August 14, 2008 – Directive 283 contains a clarification of the obligation of federal contractors to maintain and analyze the race and ethnicity data of applicants and employees in AAPs. This directive confirms, again, that contractors have the choice of using either the new or old EEO-1 race/ethnicity categories when compiling their AAP(s). The OFCCP will not cite a company for non-compliance solely based on their choice of using either the old or new categories.

**Additional Information:** See Directives 281, 282, and 283 as attached. Also attached is the latest OFCCP presentation entitled OFCCP: The Homestretch. This presentation discusses the above initiatives as well as electronic recordkeeping issues.

## EEOC Updates

July 22, 2008 – The EEOC issued Section 12 of the new Compliance Manual on “Religious Discrimination.” This section is intended to replace Section 628: Religious Accommodation in the EEOC Compliance Manual, Volume II and any associated appendices. The new section provides guidance and instructions for investigating and analyzing charges alleging discrimination based on religion. For additional information see:

<http://www.eeoc.gov/policy/docs/religion.html>.

The Annual Report on the Federal Work Force: Fiscal Year 2007 is now available at <http://www.eeoc.gov/federal/fsp2007/index.html>.

## Upcoming ERS Group Seminars

### **Employment Discrimination: Economic and Statistical Evidence**

Employment attorneys and human resource professionals gain experience with the conceptual background and statistical applications of economic models used in litigation, internal monitoring and regulatory compliance in today’s employment environment

Santa Monica, CA – Shutters on the Beach Hotel, Thursday October 2, 2008 to Friday, October 3, 2008.

### **Preparing for OFCCP Compliance Audits and Crafting Effective Affirmative Action Plans**

Practical training for Affirmative Action, EEO, Compensation and HR Professionals, as well as attorneys involved in affirmative action planning and OFCCP audits.

Chicago, IL – Hyatt Regency Chicago, Wednesday, September 24, 2008 – Friday, September 26, 2008

Orlando, FL – Buena Vista Palace, Wednesday, April 1, 2009 – Friday April 3, 2009

<http://www.ersgroup.com/seminars.asp>



TRANSMITTAL

U.S. DEPARTMENT OF LABOR  
Employment Standards Administration  
Office of Federal Contract Compliance Programs

Number: 281

Date: July 10, 2008

ADM Notice/Other

1. **SUBJECT:** Federal Contractor's Online Application Selection System.
2. **PURPOSE:** To provide guidance in evaluating federal contractors' obligations under Section 503 of the Rehabilitation Act of 1973, as amended (Section 503), the Vietnam Era Veterans' Readjustment Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA), and Title I of the Americans with Disabilities Act of 1990, as amended (ADA), with respect to online application systems.
3. **FILING INSTRUCTIONS:**  
  
Holders of ADM and LEG Binders only: File this Notice with the attachment behind the "Other" tab in your Administrative Practices Binder.  
  
District and Area Office EOSs and EOAs only: File this Notice with the attachment behind the tab for ADM Directives in your FCCM Binder.
4. **OBSOLETE DATA:** None.
5. **DISTRIBUTION:** A, B (both hard copy and electronically), and C (hard copy only).
6. **EXPIRATION DATE:** This directive remains in effect until superseded.

CHARLES E. JAMES, SR.  
Deputy Assistant Secretary for  
Federal Contract Compliance

DATE

7/10/2008

**EMPLOYMENT STANDARDS ADMINISTRATION  
U.S. DEPARTMENT OF LABOR  
OFFICE OF FEDERAL CONTRACT  
COMPLIANCE PROGRAMS  
WASHINGTON, D.C. 20210**

ADM Notice/Other

1. **SUBJECT**: Federal Contractor's Online Application Selection Systems.<sup>1</sup>
2. **PURPOSE**: To provide guidance in evaluating federal contractors' obligations under Section 503 of the Rehabilitation Act of 1973, as amended (Section 503), the Vietnam Era Veterans' Readjustment Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA), and Title I of Americans with Disabilities Act of 1990, as amended (ADA), with respect to online application systems.
3. **BACKGROUND**: In response to changing technologies, many contractors have moved towards using an online application system as their primary, if not exclusive, method for accepting applications for employment. While some of these systems may be accessible to individuals with disabilities, others may be completely inaccessible or only partially accessible due to technological limitations. Irrespective of the level of accessibility of the online application system, federal contractors and subcontractors must ensure that qualified individuals with disabilities and disabled veterans have an equal opportunity for employment.<sup>2</sup>

Section 503 and its implementing regulations at 41 CFR Part 60-741, and VEVRAA and its implementing regulations at Parts 60-250 and 60-300, require that contractors provide equal opportunity to qualified individuals with disabilities and disabled veterans. In addition, under 60-741.5, 60-250.5, and 60-300.5, the contractor agrees to take affirmative action to employ and advance these individuals, including, but not limited to, "recruitment, advertising, and job application procedures." These job application procedures include online application systems.

4. **POLICY**: Effective immediately, all compliance evaluations shall include a review of the contractor's online application systems to ensure that the contractor is providing equal opportunity to qualified individuals with disabilities and disabled veterans. The review should include whether the contractor is providing reasonable accommodation, when requested, unless such accommodation would cause an undue hardship. In this directive, the term "online system" shall include, but not be limited to, all electronic or web-based systems that the contractor uses in all of its personnel activities.

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<sup>1</sup> Reference to federal contractors also includes federal subcontractors.

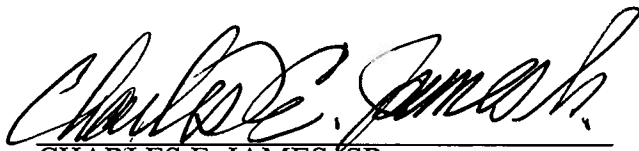
<sup>2</sup> References in this directive to "disabled veterans" encompass both "special disabled veterans," as outlined in 41 CFR Part 60-250, and "disabled veterans," as outlined in 41 CFR Part 60-300.

Where a discrimination complaint is filed involving the federal contractor's online application system,<sup>3</sup> OFCCP shall retain such complaint (rather than refer it to the Equal Employment Opportunity Commission or another agency) and investigate in accordance with 41 CFR 60-250.61, 60-300.61, 60-741.61 and 60-742. Due to its parallel authority, references to Section 503 shall also include enforcement under ADA and, if applicable, VEVRAA.

Federal contractors who fail to provide equal opportunity to individuals with disabilities and disabled veterans when using an online application system as part of their selection process may be cited under one or more of the following regulatory provisions:

- 60-741.5, 60-250.5, and 60-300.5 - *Equal Opportunity Clause*
- 60-741.21, 60-250.21, and 60-300.21 - *Prohibitions*  
In particular,
  - ◆ .21(a) – Disparate treatment
  - ◆ .21(b) – Limiting, segregating and classifying
  - ◆ .21(f) – Not making reasonable accommodation
- 60-741.23, 60-250.23, and 60-300.23 - *Medical Examination and Inquiries*
- 60-741.44, 60-250.44, and 60-300.44 – *Required contents of affirmative action programs*

5. **OBSOLETE DATA:** None.
6. **DISTRIBUTION:** A, B (both hard copy and electronically), and C (hard copy only).
7. **EXPIRATION DATE:** This directive remains in effect until superseded.



CHARLES E. JAMES, SR.  
Deputy Assistant Secretary for  
Federal Contract Compliance

7/10/2003  
DATE

<sup>3</sup> This entails all Section 503 and VEVRAA complaints that include as an allegation failure to accommodate in the application process (where an electronic process is used). In addition, complaints alleging failure to hire based on status as a qualified individual with a disability or protected disabled veteran, or failure to provide a reasonable accommodation during the application process should be scrutinized to determine whether an online application system was involved and whether an equal opportunity to complete the application process was afforded.



**TRANSMITTAL**

**U.S. DEPARTMENT OF LABOR  
Employment Standards Administration  
Office of Federal Contract Compliance Programs**

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Number: 282

Date: July 17, 2008

Notice/Other

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1. **SUBJECT:** Good-Faith Initiative for Veterans Employment (G-FIVE).
2. **PURPOSE:** To outline the evaluation factors, processes, and procedures for implementing the G-FIVE Initiative.
3. **FILING INSTRUCTIONS:**

Holders of ADM and LEG Binders only: File this Notice with the attachment behind the "Other" tab in your Administrative Practices Binder.

District and Area Office EOSs and EOAs only:

File this Notice with the attachment behind the tab for ADM Directives in your FCCM Binder.

4. **OBSOLETE DATA:** None.
5. **DISTRIBUTION:** A, B (both hard copy and electronically); C (hard copy only).
6. **EXPIRATION DATE:** This directive remains in effect until superseded.

**CHARLES E. JAMES, SR.**  
Deputy Assistant Secretary for  
Federal Contract Compliance

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**DATE**

**EMPLOYMENT STANDARDS ADMINISTRATION  
U.S. DEPARTMENT OF LABOR  
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS  
WASHINGTON, DC 20210**

**ADM Notice/Other**

1. **SUBJECT:** Good-Faith Initiative for Veterans Employment (G-FIVE).
2. **PURPOSE:** To outline the evaluation factors, processes, and procedures for implementing the G-FIVE Initiative.
3. **BACKGROUND:** The Vietnam Era Veterans' Readjustment Assistance Act, as amended, 38 U.S.C. §4212 (VEVRAA), and its implementing regulations originally prohibited federal contractors from discriminating in employment and required them to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era. Statutory amendments made in 1998, 2000, and 2002 modified VEVRAA's coverage to include other protected veterans (veterans who served on active duty or in a campaign or expedition for which a campaign badge has been authorized), recently separated veterans, Armed Forces service medal veterans, and all veterans with service-connected disabilities.<sup>1</sup> According to a recent study conducted by the Bureau of Labor Statistics, as of August 2007, the total estimate of the veteran population was 22.6 million.<sup>2</sup> Under VEVRAA's implementing regulations (41 CFR Part 60-250 and 60-300), federal contractors and subcontractors agree to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals without discrimination based on their status as a covered veteran.

The Good-Faith Initiative for Veterans Employment (G-FIVE):

- Reaffirms OFCCP's commitment to ensure compliance with the requirements of VEVRAA;
- Recognizes companies' "best practices" for the employment and advancement of veterans.
- Creates an incentive for federal contractors and subcontractors to increase their employment of and affirmative action for covered veterans; and,
- Strengthens VEVRAA partnerships between OFCCP and other agencies and veterans groups.

No additional Paperwork Reduction Act (44 U.S.C. 3501-3520) burden hours are created by the G-FIVE Initiative as the federal contractors and subcontractors eligible for the

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<sup>1</sup> The Veterans Employment Opportunities Act of 1998, the Veterans Benefits and Health Care Improvement Act of 2000, and the Jobs for Veterans Act enacted in 2002.

<sup>2</sup> Employment Situation of Veterans 2007. Available online: [www. http://www.bls.gov/news.release/vet.toc.htm](http://www.bls.gov/news.release/vet.toc.htm).

Initiative are already required to maintain records in accordance with 41 CFR Part 60 and those records would address all applicable evaluation criteria. Contractors are not required to prepare any additional paperwork in order to be eligible.

In addition, in this Initiative, reference to the G-FIVE contractors and subcontractors applies to only individual establishments, not the company in totality.

4. **GUIDELINES:** This Administrative Notice transmits the procedures that initiates and promotes the G-FIVE Initiative.

a. National Office Initiatives:

- i. Announce the G-FIVE Initiative by official press release from the OFCCP Deputy Assistant Secretary.
- ii. Develop a G-FIVE informational section on the OFCCP web site.
- iii. Post G-FIVE Frequently Asked Questions (FAQs) on the OFCCP web site.
- iv. Develop G-FIVE compliance assistance materials and conduct Webinars for internal OFCCP staff, federal contractors, and other stakeholders about the G-FIVE Initiative.
- v. Form partnerships with other government agencies to identify “best practices” that increase the employment of VEVRAA-covered veterans, including, but not limited to, sharing the information contained in the VETS-100, VETS 100A, and any subsequent reports.
- vi. Use information from the Region’s weekly activity reports to track the progress of the G-FIVE Initiative.
- vii. Create an annual (fiscal year) summary report regarding the Initiative’s benefits, best practices, and lessons learned to be included in the OFCCP Compliance Assistance “end of year” progress report and DOL’s Performance and Accountability Report.
- viii. Research the feasibility of using the VETS-100, VETS-100A, and any subsequent report data to evaluate trends in hiring and promoting covered veterans.

b. Regional, District, and Area Office Initiatives:

- i. Establish or reaffirm OFCCP’s partnerships with state and local employment service agencies by requiring the following:

- Within 45 days of the signing of this Directive, OFCCP Area and District offices staff will meet and/or conduct a conference call with their local employment service delivery system agencies to discuss:
  - Equal Employment Opportunity and Affirmative Action requirements outlined in 41 CFR Part 60-250 and 60-300, and the differences between these regulations. (Offices may use the JVA Frequently Asked Questions, located on the OFCCP website at: <http://www.dol.gov/esa/regs/compliance/ofccp/faqs/jvafaqs.htm> to assist them in these meetings.)
  - The new G-FIVE Initiative.
- ii. Area and District offices will meet and/or conduct a conference call with these agencies at least annually thereafter.
- iii. Regions will report all contacts, meetings, compliance assistance seminars, and noteworthy significant achievements by contractors or state/local employment service delivery system agencies in their Weekly Reports using the following format:

Good-Faith Initiative for Veterans Employment (G-FIVE)  
Activity Report

SAMPLE

<b>Date</b>	<b>Contractor, State or Local Employment Agency</b>	<b>Location (City &amp; State)</b>	<b>G-FIVE Activity</b>	<b>G-FIVE Significant Achievements (Example - increase in VEVRAA workforce, programs that enhance VEVRAA compliance, best practices, newsworthy stories)</b>
01/01/08	State Job Service Center employees	Seattle, WA	Held Compliance Assistance Workshop on the requirements of 41 CFR Part 60-250 and 60-300 and information on the G-FIVE Initiative	
04/02/08	XYZ Company	Las Vegas, NV		Developed a training program with local employment service agency resulting in a 10% increase in its veteran workforce.

5. **EVALUATION FACTORS:** The following factors will be considered when evaluating federal contractor and subcontractor establishments for G-FIVE recognition:

- i. Evidence of covered veterans in the contractor's labor force.
- ii. Evidence of an increase in the number of covered veterans in the contractor's labor force.
- iii. The number of partnerships with local veterans' service organizations to employ or advance covered veterans.
- iv. Established liaison with the state workforce agency job bank or the local employment service delivery system representative to facilitate the posting of their job listings. Whether appropriate job openings were sent to the state and/or local employment service delivery system and the number of veterans hired by the contractor during the AAP year.
- v. Recruitment efforts at educational institutions to reach students who are covered veterans.
- vi. The number of job advertisements in the local community targeting veterans; and targeted recruitment of qualified covered veterans during company career days and/or related activities in contractor communities.
- vii. For prime contractors, evidence that demonstrates a commitment to encourage their subcontractors to seek qualified covered veterans for employment opportunities.
- viii. Affirmative action steps taken to attract qualified special disabled or disabled veterans through the nearest Veterans Administration job placement program.
- ix. The number of on-the-job training opportunities provided to covered veterans.


6. **HOW TO SUBMIT RECOMMENDATIONS FOR G-FIVE RATINGS:**


- i. Based on the outcome of a full compliance review, i.e., desk audit, onsite, and offsite, each Fiscal Year the Regional Director will make G-FIVE recommendations to the National Office of contractors and subcontractors that have demonstrated outstanding achievements in the employment of covered veterans, based on the above evaluation factors.
- ii. Contractors and subcontractors also may self-nominate by submitting to the appropriate Regional Director a written statement of their interest in being considered for G-FIVE recognition. A full compliance review will be conducted if the nominated establishment has not undergone a full compliance review within 24 months of the nomination.

7. **EVALUATION PROCEDURES:** The following are the guidelines for evaluating potential G-FIVE contractors and subcontractors:
- i. The contractor or subcontractor is not required to undertake all the activities listed in the above evaluation factors to be considered a G-FIVE contractor or subcontractor.
  - ii. The federal contractor or subcontractor establishment shall be vetted to ensure that it does not have an employment discrimination charge that was found to be meritorious and/or a pending or settled systemic discrimination finding. Clearances will also be sought from appropriate Department of Labor agencies.
  - iii. A committee comprised of both National and Regional OFCCP representatives will evaluate the submissions and develop a list to be submitted to the OFCCP Deputy Assistant Secretary (DAS) for approval.
  - iv. Upon approval by the OFCCP DAS, contractors or subcontractors that receive a G-FIVE rating will be notified by letter of their selection and recognized on the OFCCP web site in a "best practices" section.

8. **HOW CONTRACTORS RECEIVING A G-FIVE RATING WILL BE RECOGNIZED:**

- i. Moratorium on compliance evaluations - Contractor or subcontractor establishments that receive a G-FIVE rating will be excluded from an OFCCP compliance evaluation for three (3) years following the date the recipient receives the rating, unless:
  - A complaint suggests equal employment opportunity issues that warrant a compliance evaluation;
  - An EEOC or state fair employment practices agency investigation reveals significant equal employment opportunity issues; or
  - The DAS, acting upon a credible report of a violation of a law enforced by OFCCP, determines that a compliance evaluation is warranted.
- ii. Contractors and subcontractors receiving G-FIVE ratings also will be recognized on OFCCP's webpage.
- iii. G-FIVE rated contractors and subcontractors will receive certificates.

  
**CHARLES E. JAMES, SR.**  
**Deputy Assistant Secretary for**  
**Federal Contract Compliance**

  
**DATE**



TRANSMITTAL

U.S. DEPARTMENT OF LABOR  
Employment Standards Administration  
Office of Federal Contract Compliance Programs

Number: 283

Date: August 14, 2008

ADM Notice/Other

1. **SUBJECT:** Federal contractors' obligation to maintain and analyze the race and ethnicity data of applicants and employees in Affirmative Action Programs prepared in accordance with Executive Order 11246, as amended.
2. **PURPOSE:** To establish field enforcement guidance for evaluating the use of race and ethnicity categories in the Affirmative Action Programs prepared by federal contractors in accordance with Executive Order 11246, as amended

3. **FILING INSTRUCTIONS:**

Holders of ADM and LEG Binders only: File this Notice with the attachment behind the "Other" tab in your Administrative Practices Binder.

District and Area Offices:

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4. **OBSOLETE DATA:** None.
5. **DISTRIBUTION:** A, B (both hard copy and electronically); C (hard copy only).
6. **EXPIRATION DATE:** This Directive remains in effect until superseded.

*Charles E. James, Sr.*

CHARLES E. JAMES, SR.  
Deputy Assistant Secretary for  
Federal Contract Compliance

*August 14, 2008*

DATE

**EMPLOYMENT STANDARDS ADMINISTRATION  
U.S. DEPARTMENT OF LABOR  
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS  
WASHINGTON, DC 20210**

**ADM NOTICE/OTHER**

1. **SUBJECT:** Federal contractors' obligation to maintain and analyze the race and ethnicity data of applicants and employees in Affirmative Action Programs prepared in accordance with Executive Order 11246, as amended.
2. **PURPOSE:** To establish field enforcement guidance for evaluating the use of race and ethnicity categories in the Affirmative Action Programs prepared by federal contractors in accordance with Executive Order 11246, as amended.
3. **BACKGROUND:** Several provisions in the regulations implementing Executive Order 11246, as amended (the "Executive Order"), require federal contractors to maintain and analyze data on the sex, race, and ethnicity of employees and applicants.<sup>1</sup> The Executive Order Affirmative Action Program (AAP) regulations generally require that contractors perform these analyses for minorities in the aggregate, rather than for particular minority groups. Only one provision of the AAP regulations – 41 CFR § 60-2.11 – requires contractors to use specific race and ethnic categories. This section requires contractors to develop an organizational profile reflecting the sex, race, and ethnicity of its incumbents, and indicating the total number of male and female incumbents in each of the following groups: Blacks, Hispanics, Asians/Pacific Islanders, and American Indians/Alaskan Natives. See 41 CFR §§ 60-2.11(b)(3)(iv), 60-2.11(c)(4).<sup>2</sup>

Under 41 CFR § 60-1.7(a), federal contractors with 50 or more employees, and that meet the following thresholds, must complete and file annually an accurate Standard Form 100 (EEO-1) Report:

- a) have a Government contract, subcontract, or purchase order of \$50,000 or more,
- b) serve as a depository of Government funds in any amount, or
- c) are a financial institution that acts as an issuing and paying agent for U.S. savings bonds and savings notes.

The EEO-1 Report is used by both OFCCP and the United States Equal Employment Opportunity Commission (EEOC) to collect data from private employers and government

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<sup>1</sup> All references to federal contractors also include covered federal subcontractors. The term "applicant" is intended to refer to both applicants and Internet Applicants as those terms are used in section 60-1.12(c).

<sup>2</sup> See also, 41 CFR § 60-3.4, in which contractors are required to maintain records by "sex, and the following races and ethnic groups: Blacks (Negroes), American Indians (including Alaskan Natives), Asians (including Pacific Islanders), Hispanic (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race), white (Caucasians) other than Hispanic...."

contractors about their minority and female workforce.<sup>3</sup> The agencies also use the EEO-1 Report data to analyze patterns of employment of women and minorities and to support civil rights enforcement.

Since 1977, employers have been required to report data on the EEO-1 Report using five race and ethnic categories, and nine job categories. The race and ethnic categories are:

- Hispanic
- White (not of Hispanic origin)
- Black (not of Hispanic origin)
- Asian or Pacific Islander
- American Indian or Alaskan Native

The job categories are:

- Officials and Managers
- Professionals
- Technicians
- Sales Workers
- Office and Clerical
- Craft Workers (Skilled)
- Operatives (Semi-skilled)
- Laborers (Unskilled)
- Service Workers

In November 2005, the EEOC, after consultation with OFCCP and consideration of extensive public comments, finalized several modifications to the system used by employers to classify, the race, ethnicity, and job categories of their workforce on the EEO-1 Report. The revised EEO-1 Report requires reporting in seven racial and ethnic categories, and subdivides the “Officials and Managers” job category. The chart below outlines these changes:

	<b>OLD EEO-1 REPORT</b>	<b>NEW EEO-1 REPORT</b>	
<b>Race and Ethnicity</b>	Hispanic	Hispanic or Latino	
	White (not of Hispanic origin)	White, not Hispanic or Latino	
	Black (not of Hispanic origin)	Black or African-American, not Hispanic or Latino	
	Asian or Pacific Islander		Asian, not Hispanic or Latino
			Native Hawaiian or Other Pacific Islander, not Hispanic or Latino
American Indian or Alaskan Native	American Indian or Alaskan Native, not Hispanic or Latino		
		Two or More Races, not Hispanic or Latino.	

<sup>3</sup> See 42 U.S.C 2000e-8(c). For more information on who must file the EEO-1 Report, see <http://www.eeoc.gov/eeo1survey/whomustfile.html>.

<b>Job Categories</b>	Officials and Managers	Executive/Senior Level Officials and Managers First/Mid Level Officials and Managers
	Professionals	Professionals
	Technicians	Technicians
	Sales Workers	Sales Workers
	Office and Clerical	Office and Clerical
	Craft Workers (Skilled)	Craft Workers (Skilled)
	Operative (Semi-Skilled)	Operative (Semi-Skilled)
	Laborers	Laborers
	Service Workers	Service Workers

OFCCP's regulations regarding the race, ethnicity, and job categories used by contractors have not changed to reflect the new EEO-1 categories, thus resulting in contractors either maintaining dual data collection systems or delaying implementation awaiting further instructions from OFCCP.

4. **POLICY:** As a matter of enforcement discretion, OFCCP will not cite any contractor for non-compliance with the Executive Order solely because it utilizes the race, ethnicity, or job categories required by the new EEO-1 Report. Further, 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 new EEO-1 Report.
  
5. **FIELD ENFORCEMENT GUIDANCE:** Compliance Officers should adhere to the following principles when evaluating the use of race and ethnicity categories in the AAPs prepared by federal contractors in accordance with the Executive Order, as amended:
  - A. Contractor data tracking responsibilities remain the same.<sup>4</sup> Accordingly, self-identification will remain the preferred method for compiling information about the sex, race or ethnicity of applicants and employees. A contractor's invitation to self-identify race or ethnicity should state that the submission of such information is voluntary. However, contractors may use post-employment records or visual observation when an individual declines to self-identify his or her race or ethnicity.<sup>5</sup>
  
  - B. Until further rules and guidance are provided by OFCCP, contractors should not be cited for noncompliance with the Executive Order if they prepare their AAPs using the revised EEO-1 categories, rather than the race and ethnicity categories listed in §60-2.11 (the original EEO-1 categories). Contractors also should not be cited for continuing to use the racial and ethnic categories provided under OFCCP's current regulations. Regardless of which categories are used, and consistent with the

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<sup>4</sup> See Contractor Data Tracking Responsibilities Directive, <http://www.dol.gov/esa/regs/compliance/ofccp/directives/dir265.htm>

<sup>5</sup> Contractors are encouraged to use tear-off sheets, post cards, or short forms to request demographic data.

guidance of the EEOC,<sup>6</sup> Compliance Officers should evaluate whether contractors are: (1) permitting individuals to choose to self-identify as belonging to more than one race; and (2) obtaining this data either by allowing individuals to select more than one of the single race categories or by allowing individuals to select a two or more races category.

- C. It is important that contractors be permitted to collect and analyze workforce data in a manner that allows them to meaningfully examine their progress towards equal employment opportunity. Accordingly, nothing in this Directive is intended to prohibit more detailed data collection efforts by contractors. Contractors may, but are not required to, obtain more detailed demographic data from applicants and employees. Some contractors may find such data useful for research or statistical purposes, or for self-monitoring of their equal employment opportunity efforts. For example, some contractors may wish to obtain more detailed demographic data from individuals self-identifying as a single race, such as Asian, while other contractors may wish to obtain more detailed demographic data, including racial data, from those individuals who self-identify as Hispanic or Latino. Still other contractors may wish to collect and analyze more detailed demographic data regarding those individuals who self-identify as belonging to more than one race.
- D. Regardless of how detailed the demographic data the contractor collects, it must be maintained in accordance with OFCCP's recordkeeping requirements.
- E. Compliance with specific AAP requirements:
  - 1) Workforce Analysis (Organizational Profile 60-2.11): Until further rules and guidance are provided by OFCCP, when developing an organizational profile, as required by § 60-2.11, contractors should not be cited for noncompliance with the Executive Order if they choose to develop such analyses using the revised EEO-1 categories, rather than the race and ethnicity categories listed in §60-2.11 (the original EEO-1 categories). Contractors also are permitted to prepare their AAP using the racial and ethnic categories provided under OFCCP's current regulations.
  - 2) Job Group Analysis (60-2.12): When conducting a job group analysis for affirmative action purposes, small contractors with fewer than 150 employees may prepare the required analysis utilizing the revised EEO-1 Report job categories as job groups. Accordingly, these contractors will generally subdivide the officials and managers AAP job group into two AAP job groups: (1) Executive/Senior Level Officials and Managers and (2) First/Mid Level Officials and Managers. In some circumstances, subdividing the officials and

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<sup>6</sup> "Employers may ask employees to specify particular races rather than to check "Two or More Races," but they are not required to do so." <http://www.eeoc.gov/eeo1/qanda-implementation.html>. The Commission does not require employers to collect and maintain more detailed data than needed to complete the EEO-1 report, although the Commission notes that some employers may find it necessary to do so for research or statistical purposes or for self-monitoring. See 70 Fed. Reg. 71294, 71298 (11/28/05).

managers category may result in job groups with too few incumbents to permit meaningful analyses and goal setting. In these cases, contractors with fewer than 150 employees should combine the Executive/Senior Level Officials and Managers and the First/Mid Level Officials and Managers subcategories when examining potential underutilization.

- 3) Utilization Analysis (60-2.13 through 60-2.15): Consistent with OFCCP's longstanding policy, all individuals identified as being Hispanic or Latino should continue to be counted as minorities when comparing the percentage of women and minorities in each of a contractor's job groups to the available workforce, as required by §§ 60-2.13, 60-2.14, and 60-2.15, or when examining whether a contractor's employment practices result in disparities in the employment or advancement of minorities, as required by § 60-2.17. If an individual self-identifies as Hispanic or Latino and also selects a race, contractors should continue to identify the individual as being "Hispanic or Latino" when preparing the required AAP analyses. This approach is consistent with the approach adopted by the EEOC for purposes of the revised EEO-1 Report.

Similarly, contractors should consider all individuals identified as belonging to two or more races as minorities when comparing the percentage of women and minorities in each of their job groups to the available workforce, as required by §§ 60-2.13, 60-2.14 and 2.15, or when examining whether their employment practices result in disparities in the employment or advancement of minorities, as required by § 60-2.17.

- 4) Placement of Goals (60-2.16): When establishing placement goals pursuant to § 60-2.16, contractors should, in most cases, continue to establish a single goal for all minorities. Where a substantial disparity exists in the utilization of a particular minority group, or in the utilization of men or women of a particular minority group, the contractor may be required to establish separate goals for those groups. Contractors are not expected to set a separate placement goal for individuals identified as belonging to more than one race. If a contractor has established placement goals for particular minority groups and has maintained data regarding the specific races of those individuals identified as belonging to two or more races, the contractor may present such data to OFCCP to demonstrate its good faith efforts in addressing its utilization of particular minority groups.<sup>7</sup>

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<sup>7</sup> The small number of individuals identified as belonging to more than one race makes it unlikely that many quantitative analyses of a contractor's workforce will reveal a substantial disparity in the utilization of individuals belonging to Two or More Races. In the 2000 Census, 2.4 percent of the total population (or 6.8 million people) identified themselves as belonging to more than one race. See United States Census Bureau, *The Two or More Races Population: 2000*, Census 2000 Brief, at p. 9 (November 2001), available at <http://www.census.gov/prod/2001pubs/c2kbr01-6.pdf>. The U.S. Census 2005 American Community Survey Report reported that only 1.9 % of the total U.S. population identified as belonging to the Two or More Races category. See United States Census Bureau, *American Community Survey, General Demographic Characteristics: 2005*, available at [http://factfinder.census.gov/servlet/DTTable?\\_bm=y&-geo\\_id=01000US&-ds\\_name=ACS\\_2005\\_EST\\_G00\\_&-](http://factfinder.census.gov/servlet/DTTable?_bm=y&-geo_id=01000US&-ds_name=ACS_2005_EST_G00_&-)

- 5) Additional AAP Requirements (60-2.17): OFCCP's regulations require that a contractor perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist. Section 60-2.17 requires that contractors examine whether their employment practices result in disparities in the employment of minorities in the aggregate.<sup>8</sup> When conducting this analysis, contractors are not required to separately evaluate their employment practices with regard to individuals identified solely as belonging to two or more races. Rather, these individuals should be considered as part of the aggregate group of minorities.

Some contractors find it useful to conduct the analyses required by § 60-2.17 for particular minority groups, as well as for minorities in the aggregate. Contractors that maintain more detailed information regarding the race and ethnicity of their workforces may choose to reallocate those identified as belonging to two or more races into single race categories for purposes of affirmative action analyses. Contractors electing to do this reallocation may use the allocation rules developed by OMB in its Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement.<sup>9</sup>

- 6) Support Data (60-2.17(b)(2) and Part 60-3): When evaluating whether a contractor has maintained information on the impact of its selection procedures and conducted an adverse impact analysis under part 60-3, contractors will only be expected to produce analyses relating to the impact on those identified as belonging to one of the single race and ethnic categories. Contractors will not be expected to produce analyses of the impact of employee selection procedures on groups comprised of individuals identified as belonging to more than one race; but contractors may be asked for other employment records they may have relating to such individuals. Such records may include any information regarding the reallocation of individuals identified as belonging to more than one race into single race categories, or records maintained by the contractor that utilize the race and ethnic categories of the new EEO-1 form.

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[mt\\_name=ACS\\_2005\\_EST\\_G2000\\_B02001; http://factfinder.census.gov/servlet/ADPTable?\\_lang=en&-\\_ds\\_name=ACS\\_2005\\_EST\\_G00\\_&-\\_format.](http://factfinder.census.gov/servlet/ADPTable?_lang=en&-_ds_name=ACS_2005_EST_G00_&-_format.)

<sup>8</sup> Pursuant to section 60-2.17, the contractor must evaluate the following minimum areas: (1) The workforce by organizational unit and job group to determine whether there are problems of minority or female utilization (i.e., employment in the unit or group), or of minority or female distribution (i.e., placement in the different jobs within the unit or group); (2) personnel activity (applicant flow, hires, terminations, promotions, and other personnel actions) to determine whether there are selection disparities; (3) compensation system(s) to determine whether there are sex-, race-, or ethnicity-based disparities; (4) selection, recruitment, referral, and other personnel procedures to determine whether they result in disparities in the employment or advancement of minorities or women; and (5) any other areas that might impact the success of the affirmative action program.

<sup>9</sup> OMB, Bulletin 00-02, Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement (March 9, 2000), available at <http://www.whitehouse.gov/omb/bulletins/b00-02.html>.

F. Where a contractor has not maintained more detailed demographic information about those individuals identified as belonging to more than one race, Census data, labor market data, and other labor market data may be used to assess a contractor's employment practices. In conducting this analysis, the proportion of individuals identified as belonging to more than one race in the contractor's workforce may be compared with labor force statistics or other data on the percentages of multiple race individuals in the relevant qualified labor force. This data could then be used to estimate single race allocation for those individuals identified as belonging to more than one race when a contractor has not retained such information.

5. **OBSOLETE DATA:** None.

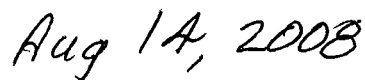
6. **DISTRIBUTION:** A, B (both hard copy and electronically); C (hard copy only).

7. **EXPIRATION DATE:** This Directive remains in effect until superseded.



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**CHARLES E. JAMES, SR.**  
**Deputy Assistant Secretary for**  
**Federal Contract Compliance**



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**DATE**



**U.S. Department of Labor  
Office of Federal Contract Compliance Programs**

# ***OFCCP: The Homestretch***

**DAVID FRANK  
Deputy Director  
OFCCP**

**SANDRA DILLON  
Acting Director  
Division of Policy, Planning,  
& Program Development**



# ***2008 Accomplishments***

- **EEO-1 Categories in the AAP**
- **Online Application Systems: *Providing Equal Opportunity to Individuals with Disabilities***
- **Good-Faith Initiative for Veterans Employment (G-FIVE)**
- **Electronic Recordkeeping**
- **Internet Redesign and FAQ Updates**

# Use of EEO-1 in AAPs



- **New Directive posted on September 2, 2008, supplements Interim Guidance and provides additional field enforcement on the use of race and ethnicity categories.**
  - **Workforce Analysis (Organizational Profile 60-2.11)**
  - **Job Group Analysis (60-2.12)**
  - **Utilization Analysis (60-2.13 through 60-2.15)**
  - **Placement of Goals (60-2.16)**
  - **Additional AAP Requirements (60-2.17)**
  - **Support Data (60-2.17(b)(2) and Part 60-3)**

# EEO-1 Key Points

- **OFCCP will accept AAPs and supporting records that reflect the race, ethnicity, and job categories outlined in either 41 CFR 60-2 or the new EEO-1 Report, and**
- **OFCCP will not cite any contractor for non-compliance with the EO solely because it utilizes the race, ethnicity, or job categories required by the new EEO-1 Report.**

# EEO-1 Directive

Regardless of which categories are used, COs should evaluate whether contractors are:

- (1) permitting individuals to choose to self-identify as belonging to more than one race; and
- (2) obtaining this data either by allowing individuals to select more than one of the single race categories or by allowing individuals to select a two or more races category.

Contractors may collect more detailed data.

# EEO-1: Two or More Races

- All individuals identified as belonging to two or more races are considered minorities for purposes of §§ 60-2.13, 60-2.14 2.15, and 2.17.
- Contractors are not expected to set a separate placement goal for individuals identified as belonging to more than one race.
- Disparity analyses (under 60-2.17 and 60-3) are not separately required for individuals identified solely as belonging to two or more races.

# Online Application Systems:

*Providing Equal Opportunity to Individuals  
with Disabilities*

Presenter: Naomi Levin, Acting Branch Chief  
Policy Development & Procedures



# Contractor EEO Obligations

- **Contractors must ensure that qualified individuals with disabilities and disabled veterans have an equal opportunity to apply and compete for jobs.**
- **This may include providing needed reasonable accommodations, unless doing so would cause undue hardship (significant difficulty or expense).**

# Directive Provisions

- **All compliance evaluations will include review of contractor's online application system to ensure equal opportunity is provided to people with disabilities.**
- **OFCCP will retain and investigate individual complaints involving a contractor's online application system.**

# Examples of Accessibility Problems

- **Someone with a visual disability may be unable to read the graphics on the contractor's website.**
- **An online application system may not operate with adaptive technology used by people with disabilities.**
- **Company kiosks may be inaccessible to people with mobility impairments.**



# Contractor Actions

- **Prominently display a notice of how to obtain reasonable accommodations, including contact and process information**
- **Incorporate “interoperable” technology into the online application system.**
- **Allow people who cannot use the online system because of a disability to apply for a job in an alternate way.**
- **If company kiosks are used, ensure that they are accessible to those with mobility impairments.**

# Resources

- **OFCCP**
  - [www.dol.gov/esa/ofccp](http://www.dol.gov/esa/ofccp)
- **ODEP**
  - [www.dol.gov/odep](http://www.dol.gov/odep)
- **EEOC**
  - [www.eeoc.gov](http://www.eeoc.gov)
- **Job Accommodation Network (JAN)**
  - [www.jan.wvu.edu](http://www.jan.wvu.edu)

The background of the slide is a close-up, slightly blurred image of the American flag, showing the stars and stripes in a draped, wavy pattern. The colors are vibrant, with deep reds, bright whites, and dark blues.

**Office of Federal Contract Compliance Programs**

# **Good-Faith Initiative for Veterans Employment (G-FIVE)**

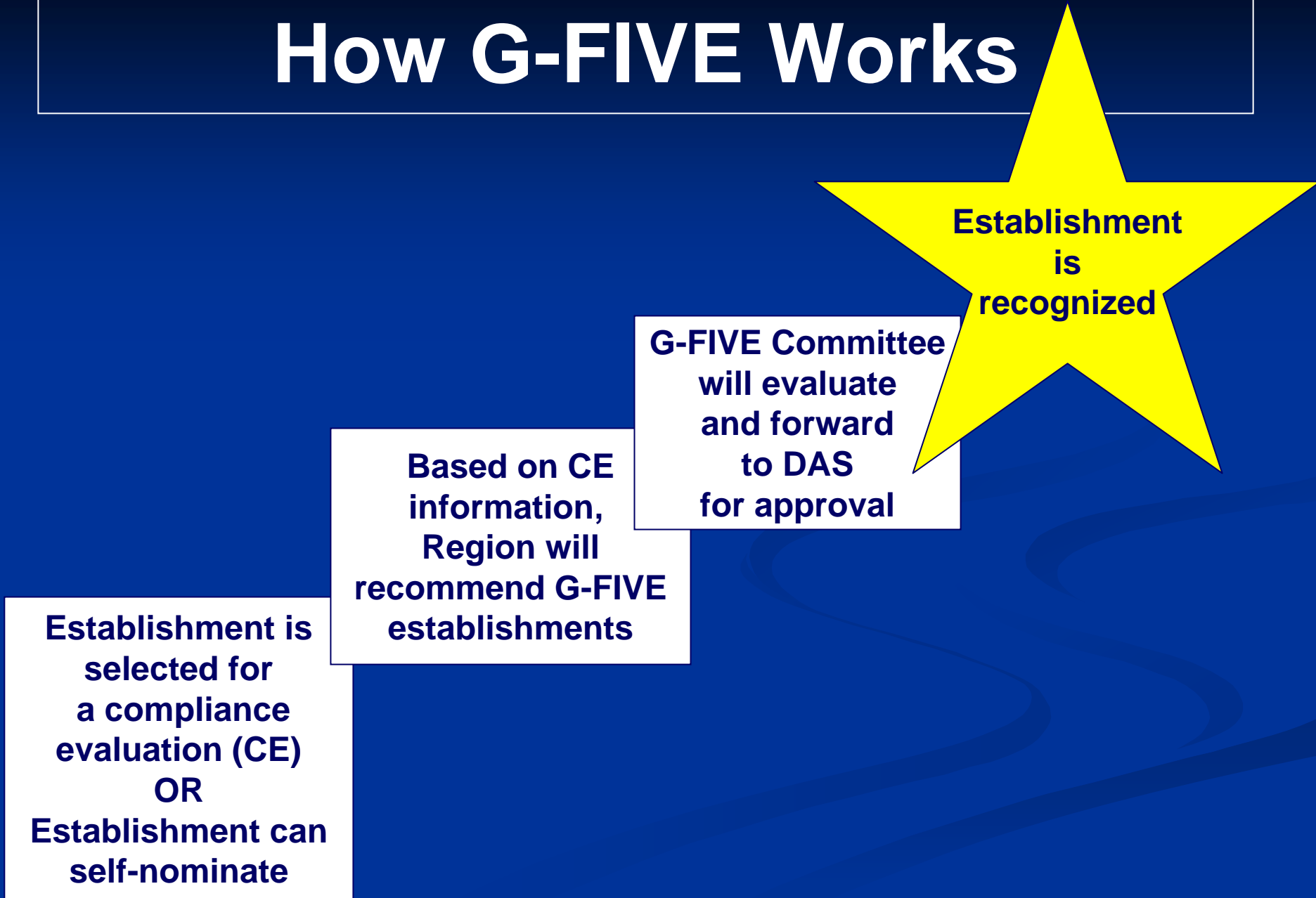
***An OFCCP Initiative Supporting America's Heroes***

**Presenter: Terry Hankerson, Branch Chief  
Regulation Development & Evaluation**

# **G-FIVE**

- **Reaffirms OFCCP's commitment**
- **Recognizes best practices and good faith efforts to employ and advance veterans**
- **Creates contractor incentives**
- **Strengthens partnerships**

# How G-FIVE Works



# **G-FIVE Evaluation Factors**

- **Number of veterans in the workforce**
- **Increase in veterans in the workforce**
- **Partnerships with veterans groups**
- **Liaison with State agencies**
- **Recruitment at educational institutions**

# G-FIVE Evaluation Factors

- Recruitment efforts, e.g., job listings, advertisements, job fairs
- Compliance by subcontractors
- On-the-job training for veterans
- Affirmative action efforts to attract special disabled or disabled veterans

## KEY!

- \* NO ADDITIONAL PAPERWORK
- \* NOT ALL FACTORS NEEDED

# **G-FIVE Recognition**

- **Company establishment will receive recognition letter and certificate from DAS**
- **Company establishment will be highlighted on OFCCP's webpage**
- **Company establishment will be excluded from an OFCCP compliance evaluation for three years**

# ***Electronic Recordkeeping***



## **Executive Order 11246**

- **Any personnel or employment record that is made or kept by the contractor must be “preserved” by the contractor for a minimum of two years.**
- **If the contractor has fewer than 150 employees or does not have a contract of at least \$150,000, the record retention period is a minimum of one year.**

**Presenter: Sandra Dillon, Acting Director  
Division of Policy, Planning, and Program Development**

# Electronic Recordkeeping



**Original paper records can be transferred to an electronic format if:**

- **The medium used accurately reproduces the paper original and would constitute a duplicate or substitute copy of the original paper record under Federal law**
- **The record can be converted back into a legible and readable paper copy and provided to OFCCP upon request**

# Retention Provisions

Paper original records may be disposed of any time after the transfer to an electronic record system, provided the electronic record accurately reproduces the paper original record.


If contractors use an electronic recordkeeping system, they must ensure that the electronic records comply with the record retention and access regulations. That is, the records must be:

Accurate - Complete - Accessible




# New Web-Design

U.S. Department of Labor - Employment Standards Administration (ESA) - Office of Federal Contra... Page 1 of 2



**U.S. Department of Labor**  
Employment Standards Administration



[www.dol.gov/esa](http://www.dol.gov/esa) Search:  Go

Find It! | By Topic | By Audience | By Top 20 Requested Items | By Form | By Organization | By Location

August 29, 2008 DOL Home > ESA > OFCCP

## Office of Federal Contract Compliance Programs (OFCCP)

ESA   OFCCP   OLMS   OWCP   WHD

**OFCCP** Ensures employers comply with nondiscrimination and affirmative action laws & regulations when doing business with the federal government.

**Compliance Assistance**  
**Resources**  
**About OFCCP**  
**Contact Us**  
**Subscribe to E-m. Updates**

### About OFCCP

ESA's Office of Federal Contract Compliance Programs (OFCCP) is responsible for ensuring that contractors doing business with the Federal government do not discriminate and take affirmative action.

- OFCCP Mission Statement

### Highlights

- OFCCP Once Again Produces Record Financial Remedies (PDF)
- Press Release – Two New Initiatives
- Use of Race and Ethnic Categories
- Frequently Asked Questions
- More highlights...

### Contact Us

- Contact Us: 1-866-4-USA-DOL  
TTY: 1-877-889-5627

### Most Requested

- E-Laws Federal Contractor Advisor
- Small Business Guide
- Sample Affirmative Action Program AAP
- Employment Resource Referral Directory
- Interim Guidance on the use of Race and Ethnic Categories in Affirmative Action Programs

### How To...

- Request Preaward Clearance
- File a discrimination complaint
- Determine that you are a contractor
- Find EEO Cleared Establishment
- Find Construction Goals
- Find the EEO Poster
- File EEO-1 Report
- File a VETS 100

### Preaward/EEO Clearance

### Laws & Related Materials

- Executive Order 11246
- Section 503 of the Rehabilitation Act
- Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA)
- Americans with Disabilities Act (ADA)
- Regulations at 41 CFR 60
- Guidance Documents
  - Federal Contract Compliance Manual (FCCM)
  - Policy Directives

### Resources

- OFCCP Frequently Asked Questions
- Sample Affirmative Action Program AAP
- Employment Law Guide
- Small Business Guide
- Construction Technical Assistance Guide
- eLaws Federal Contractor Advisor
- Referral Directory
- Seminar and Workshop Calendar

Standard  
Format for  
all ESA

Most current  
posted here  
with NEW tag

New groups –  
such as  
Directives. Items  
can be found in  
several places





**OFCCP**

Ensures employers comply with nondiscrimination and affirmative action laws & regulations when doing business with the federal government.

## OFCCP — Frequently Asked Questions

### FAQ Topics

The FAQs in this section are not comprehensive and are not intended to address every aspect of OFCCP programs. Rather, this section contains actual questions OFCCP has received from members of the public. FAQs may be added to this section in the future, and old FAQs deleted or revised when circumstances warrant. For more detailed information, or for information on areas not specifically covered by an FAQ, please consult other sections of the [OFCCP](#) web page. The FAQs are listed alphabetically according to the following categories:

- [The Good-Faith Initiative for Veterans Employment \(G-FIVE\) Initiative](#) 
- [Accessibility of Online Application Systems](#) 
- [Electronic Recordkeeping Systems](#) 
- [Jobs for Veterans Act \(JVA\)](#) 
- [For Employees](#)
- [For Employers](#)
- [Compensation Standards](#)
- [Corporate Management Compliance Evaluation](#)
- [Federal Contractor Selection System \(FCSS\)](#)
- [Functional Affirmative Action Plan \(FAAP\)](#)
- [Internet Applicant](#)
- [Jurisdiction](#)
- [Policy/Regulatory Issues](#)

# *Homestretch*

- **Continue Focus on Systemic Discrimination**
  - **Active Case Management**
- **FCSS Schedule – FY 2009**
- **Compliance Assistance**



Presenter: David Frank, Deputy Director, OFCCP

# Active Case Management

- **Streamline procedure that allows OFCCP to maximize resources**
- **Majority of case closed after desk audit**
- **Incorporates quality audit standards to ensure compliance and responsibility to VEVRAA and 503**
- **New Directive forthcoming**

# FCSS Schedule - FY 2009

- **First Release – Second Week October 2008**
  - 2500 establishments
- **Second Release – March 2009**
  - 5000 establishments
- **Quality Compliance Evaluations**
  - National 1/50



# Compliance Assistance

- **600+ Compliance Assistance events held FY 2008**
  - **Topics range from basic “How to Prepare an AAP” to conducting a statistical analysis**
- **What - Topic Areas?**
- **Where - Workshops, Webinars?**
- **How – Brochures, Flyers, Fact Sheets, Training Materials?**

**We want to hear from you!**  
**OFCCP-Public@dol.gov**  
**<http://www.dol.gov/esa/ofccp/>**



U.S. Department of Labor  
Office of Federal Contract Compliance Programs  
*OFCCP: The Homestretch*

*Questions?*

