

## **ARE YOU READY FOR AN OFCCP AUDIT?**

The U.S. Department of Labor's Office of Federal Contract Compliance (OFCCP) won a record \$67,510,982 in financial remedies in the year 2008, a 133 percent increase since 2001. The OFCCP conducted 4,333 compliance evaluations in 2008. *Are you ready for an OFCCP Audit?*

### **What does the OFCCP administer and enforce?**

They enforce three equal employment opportunities laws: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212. These laws prohibit Federal contractors and subcontractors from discriminating on the bases of race, color, religion, sex, national origin, disability, or covered veterans' status.

The OFCCP requires government contractors and subcontractors to annually establish and maintain an Affirmative Action Plan (AAP) to assure that they take proper action to ensure equal employment opportunities. If you're a government contractor, or subcontractor, with 50 employees or more, and over \$50,000 in annual contracts, then you should have an AAP in place.

### **How does the OFCCP determine who to audit?**

The OFCCP has made great strides in becoming more efficient and effective. One of the ways that the OFCCP has become more efficient is in the implementation of the Active Case Management system (ACM), which was fully implemented in 2005. This ACM system screens contractors and subcontractors for indicators of potential discrimination, in turn allowing them to open more reviews.

In addition, in the past the OFCCP relied on self-identification of contractor and sub-contractor status, but in 2005 implemented the Contracts First project to produce a contractor list that is based on evidence of actual contracts. It also lists facilities/contractors who have had no compliance reviews in the recent past.

As you can see the increased efficiency of the OFCCP puts an organization at greater risk of being audited, along with being required to pay substantial remedies should affirmative action steps not be in place. Don't be caught without putting in place the proper Affirmative Action Plan (AAP) for your organization. The proactive steps that you take today will be extremely valuable if you are audited by the OFCCP.

### **What are the types of OFCCP audits?**

There are four types of OFCCP audits which include the following:

1. ***Compliance Review*** which consists of a comprehensive analysis and evaluation of the hiring and employment practices or an organization, the written Affirmative Action Plan, and the results of Affirmative Action efforts. This is the most comprehensive of the four types of audits. This compliance review will start with a desk audit which is a review and analysis done at the desk of

an EEO compliance officer (CO) assigned to conduct the audit. With the desk audit the OFCCP typically will provide a 30 day window to forward the requested materials.

2. **Off-Site Review** consists of an analysis and evaluation of the Affirmative Action Plan (or any part thereof and supporting documentation. This is typically done at the office of the CO with documents provided by the organization. This includes a review of personnel policies, AAP action plans, and the achievements.
3. **Compliance Check** consists of an on-site visit by a compliance officer to determine the accuracy of all data supplied and involves checking for compliance with EEO posting requirements and may also include employee interviews.
4. **Focused Review** consists of an on-site review focused on or restricted to one or more components of an AAP or its implementation. As warranted, it includes review of portions of employment practices or policy implementation.

Again, as you will notice above, if you are prepared and have the proper AAP in place, it will in turn save your organization time and money.

***“No organization’s compliance status shall be judged alone by whether or not it reached its goals and meets its time tables. Rather, each organization’s compliance posture shall be reviewed and determined by reviewing the contents of its program, the extent of its adherence to this program and its good faith efforts to make its program work.” - per the OFCCP***

### **So, what is an Affirmative Action Plan (AAP) and what should it include?**

Affirmative Action is the practice in which employers identify conspicuous imbalances in the workforce and take positive steps to **correct** underrepresentation of or adverse impact practices toward “protected classes”

The Affirmative Action Plan (AAP) focuses on the hiring, training, promoting and compensating of protected classes where there are deficiencies. The key sections that should be included in an AAP will include:

- **Organizational Profile** depicts the staffing pattern of the facility to determine if barriers to equal employment opportunity exist within any organizational unit. This should include a workforce analysis by department. In this profile the job title, EEO-1 category (I-9), Compensation and Gender/Race & Ethnicity. (\*Effective September 30, 2007 the EEOC made changes to the EEO-1 Report which recognizes the shifting demographics of today’s workplace – the OFCCP published a directive in FY 2008 to provide guidance to address these changes)
- **Job Group Analysis** lists all job titles that comprise each job group. Jobs are grouped according to whether they have similar content and responsibilities, wage rates, and opportunities for advancement. This will include: percentage of females and minorities. Oftentimes EEO-1 categories are the job groups.
- **Availability Analysis** is the analysis in which the organization considers external and internal qualified availability in determining theoretical availability of minorities and women for established job groups.

- **Utilization Analysis** is a comparison of the organization's workforce (Job Group Analysis demographics) to the computed available qualified workforce within the recruiting area. "Underutilization would be defined as having fewer minorities or women in a particular job group than would reasonably be expected by their availability.
- **Placement Goals** must be in place when the percentage of minorities or women in a job group is less than reasonably expected given their availability percentage in that job group, the organization **must** set goals (not quotas or preferences), to ensure that it meets its affirmative action obligation.
- **Action-oriented programs** include specific plans with time tables that the organization sets forth to correct any problems found in achieving placement goals and correcting identified problem areas.
- **Designation of Responsibility** is a section which specifies who will be responsible for the overall AAP. The assumption being that the person will have the authority to implement plans.
- **Identification of Problem Areas** is where the organization is expected to perform an in-depth analysis of its employment processes by organizational areas and job groups to identify any impediments to equal employment opportunity.
- **Internal Audit & Reporting System** should describe the systems the organization has in place to measure the plan's effectiveness.
- **Signature by Executive**

No organization wants to be audited, but if you are a government contractor or subcontractor and are subject to annually establishing and maintaining an Affirmative Action Plan (AAP), make sure to take the necessary steps to put a plan in place that is thorough and thoughtful. Make sure you are prepared in the OFCCP should happen to audit your organization. This will save your organization time and money and shows that you are an organization on the cutting edge of employment law and equal opportunity.

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**d.gallant MANAGEMENT ASSOCIATES is a full service human resources consulting firm which has been in the consulting business since 1987 and has clients all over the country. Prior to consulting, Deborah spent fourteen years with Key Bank as Senior Vice President, Director of Human Resources, and Corporate Training. Deborah has a total of twenty-seven years of hands-on HR experience and is a Certified Senior Professional in Human Resources (SPHR), a Certified Benefits Professional (CBP), and a Certified Compensation Professional (CCP).**

***If your organization requires assistance with your Affirmative Action Plan our Associates and AAP software systems can provide you with the assistance you require. For further information you may contact us at:  
207-773-4800 or at dgma@dgallant.com***