

Preparing for an OFCCP Audit

If your company recently received a scheduling letter for a Compliance Review (CR), Functional Affirmative Action Program Compliance Review (FAAP CR), or Corporate Management Compliance Evaluation (CMCE), you are encouraged to thoroughly read through this document, and reach out to Yocom & McKee with any questions.

If you have doubts about whether your company is subject to affirmative action regulations, it is worth taking the time to verify whether your company is a covered federal contractor or subcontractor. You can verify covered contractor status by [reviewing your company's federal contracts](#) or subcontracts to ensure that at least one meets criteria for coverage, and by applying the [Single Entity Test](#). If you find that the location that received the scheduling letter is exempt from AAP reporting requirements, it is recommended that you present the information to your legal counsel so that they may advise you on how to proceed.

How Can I Know Ahead of Time if My Company Will be Audited?

The OFCCP releases a formal email or newsletter announcement whenever they post a new Corporate Scheduling Announcement List ([CSAL](#)), which lists the locations of companies that can expect to soon receive a scheduling letter. Without knowledge of the existence of the CSAL, some contractors are caught by surprise when they receive a daunting letter that indicates that one of their facilities has been selected by OFCCP for a review. OFCCP does not send individual notices to each company on the CSAL, so it is prudent to [subscribe](#) to the OFCCP's newsletters.

How Will I Be Informed of My Impending Audit?

All audits, whether CR, FAAP CR, or CMCE* begin with receipt of what is known interchangeably as a "scheduling letter" and an "audit letter." When a contractor is selected for an audit, a scheduling letter is sent by the OFCCP informing the contractor to submit, within 30 calendar days, a copy of its affirmative action programs (AAPs) and support data specified in an accompanying itemized listing. A detailed explanation of the cover letter and itemized listing are [provided in this document](#).

** 503 Focused Reviews, Supply & Service and Construction Contractor Compliance Checks, Promotion Focused, and Accommodation Focused reviews have been suspended indefinitely; though OFCCP has not formally announced it, VEVRAA Focused reviews have been unofficially suspended.*

How Soon Should I Respond?

There's no harm in sending the requested read receipt to the Compliance Officer from whom you receive the scheduling letter, but make it brief, only acknowledging receipt of the letter.

Where Do I Start?

Read through the letter completely and thoroughly. Though it is inarguably wise to seek advice from your company's counsel, having said counsel immediately communicate directly with OFCCP may create an unnecessarily adversarial situation. Be prepared to designate a human resources staff member to be the Compliance Officer's primary contact; this person may well be you. As stated in the scheduling letter, upon receipt of the letter you have 30 calendar days to submit your organization's AAP and other requested documents and reports to the OFCCP. It might be helpful to establish a weekly timeline such as:

1. Week 1: gather all required documentation.
2. Week 2: review all report results.
3. Week 3: where there are potential areas of concern, investigate causes and prepare a defense of any seeming deficiencies.
4. Week 4: perfect your response before delivering all documentation to your Compliance Officer.

What's My Deadline for Submission?

Assume that the OFCCP is serious about its 30 calendar-day submission deadline. With the launch of its Contractor Portal, the OFCCP very likely expects that if you have certified completion of your annual AAP, there is no excuse to delay submission. The OFCCP in Directive 2022-02 indicates that they will consider extensions only under extraordinary circumstances such as the following:

1. Extended medical absences of key personnel;
2. Death in the immediate family of key personnel;
3. Localized or company-specific disaster affecting records retrieval such as a flood, fire, or computer virus;
4. Unexpected military service absence of key personnel; and
5. Unexpected turnover or departure of key affirmative action official.

What Happens if I Don't Respond on Time?

In the past, if contractors did not meet the 30-day submission deadline, they were subject to receiving what is called a "Notice to Show Cause" that gave contractors 30 days to provide a reason why the OFCCP should not institute enforcement proceedings against the organization. Directive 2022-02 reaffirms that OFCCP may continue to issue Show Cause Notices, but that OFCCP may instead immediately refer the matter to the Solicitor for administrative enforcement.

How Do I Address Each Item in the Scheduling Letter?

When you receive notice of an OFCCP audit, the type of review being conducted is stated clearly in the first paragraph, but regarding CMCE's, you may want to consider [CFR 60-2\(d\) \(1\)](#) and [\(2\)](#) when determining which employees are included in the AAP covering your corporate location. Regarding Functional Affirmative Action Plans, if you have chosen to structure your AAPs using the FAAP method, you are likely already aware that employees from multiple locations (likely with location-based pay) are analyzed together, and that the OFCCP [will require submission of every FAAP](#) that includes employees at the location under audit.



Upon receiving a scheduling letter, you will want to mark your calendar to indicate that your AAP is due 30 calendar days from receipt, and then set a timeline for yourself that allows you to thoroughly review your reports **before** submitting the required items to the OFCCP. The OFCCP's scheduling letter that is sent to contractors for CREs, FAAP CRs, and CMCEs is shown with commentary in sections below, but you can download the complete letter by clicking [here](#).



IMPORTANT: one of the most common mistakes that contractors make during audits is to submit what OFCCP would consider to be an expired AAP. The OFCCP explains what it considers to be your "current AAP" in its FAQ's. Type your AAP beginning date into [Yocom & McKee's AAP Date Calculator](#) to ensure that you've used the right data in the AAP that you plan on submitting for audit.

AAP dates are especially important when determining whether you must submit mid-year data for several of the items on the itemized listing. To quickly determine whether you are six months into your plan year, type the beginning date of your AAP and the date you received your scheduling letter into [YM's Midyear Calculator](#).

Be aware that the OFCCP expects contractors to include full-time, part-time, contract, per diem or day labor, and temporary employees in data reports. For clarification on how the OFCCP defines "employees," see [their FAQ](#) on the matter.

Yocom & McKee uses defaults on its audit reports that you or your consultants/counsel disagree with. We can accommodate most requests for reports to be run differently but know that you alone must defend any pushback from Compliance Officers.

Finally, as you review your reports, keep in mind that if adjustments to data are made to any of your AAP reports, it is safest to re-run *all documents* instead of only sections so that you're sure to capture changes globally.

Begin CR/ FAAP CR/ CMCE Scheduling Letter

OMB NO. 1250-0003
Expires 08/31/2026

Scheduling letters must be approved by OMB and should display an expiration date. If you receive a scheduling letter after the expiration date noted, you may not need to respond to the scheduling letter, but it's best to confirm this with your company's legal counsel.

VIA [INSERT CERTIFIED MAIL (TRACKING NUMBER) RETURN RECEIPT REQUESTED, EMAIL (EMAIL ADDRESS) READ RECEIPT REQUESTED]

Be aware that the OFCCP's FAQ's state clearly that "The emailed Scheduling Letter and Itemized Listing is the official notification." Your assigned Compliance Officer will follow up with a call.

Failure to send a read receipt does not excuse your company from having to submit data 30 calendar days after receipt.

(Name of contractor official)
(Title of contractor official)
(Establishment Name)
(Street Address)
(City, State, Zip Code)

Scheduling letters are emailed to the individual who certified your company's prior year EEO-1 filing. Inform your company's IT to or designate the @dol.com suffix as a safe contact so that the scheduling letter is sure to arrive. If the contractor official is no longer with the company, assign a successor to respond.

The OFCCP will not audit locations of fewer than 50 employees unless that location is the corporate site.

For a CR or CMCE, be prepared to submit data that covers the employees who work at this location as well as employees who report (either by reporting relationship or by personnel authority) to this location.

For a FAAP, be prepared to submit data that covers all employees at this location (regardless of business unit) as well as data that includes all off-site employees in business units covered by this location.

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)], or post-secondary institution with location(s) in (city and state only)] for a [Insert: compliance review, functional affirmative action program (FAAP) compliance review, or corporate management compliance evaluation (CMCE)].

The scheduling letter for Compliance Reviews (also referred to as Establishment Reviews), FAAP Compliance Reviews, and Corporate Management Compliance Evaluations are identical except by name.

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 at 41 CFR Chapter 60.[1] 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.[2]

If each of your company's federal contract(s) is below \$150,000, your company is not required to submit data outlined in the VEVRAA itemized listing. Your company also does not have to file the annual report referenced in this paragraph if it does not meet the \$150,000 threshold. The unmet threshold should be mentioned in your audit response letter.

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.[3] For the desk audit, please submit the following information:

Please read through the section of this document *When Can I Expect to Hear from My Compliance Officer?* for further explanation of the three phases.

Yocom & McKee provides four separate documents, one for each of the following four items.

- 1) AAP for Women and Minorities,
- 2) AAP for Individuals with Disabilities,
- 3) AAP for Protected Veterans, and
- 4) Support Data

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;
4. the information, including the support data specified in the enclosed Itemized Listing. If you are a post-secondary institution or Federal contractor with a campus-like setting that maintains multiple AAPs, you must submit the information requested in this scheduling letter for all AAPs developed for campuses, schools, programs, buildings, departments, or other parts of your institution, or company located in [city and state only].

Please submit your AAPs and the Itemized Listing information as soon as possible, but no later than 30 calendar days from the date you receive this letter. We request you submit your information electronically. **Error! Reference source not found.** You may email your submission to [Insert CO/ADD name and email address]. Alternatively, you may contact [Insert CO/ADD name and email address] to discuss other electronic submission methods such as the Department's secure file sharing system, Kiteworks. You may also submit your information to the address listed on page one of this letter. Contact [Insert CO/ADD name and email address] to confirm successful transmission and receipt of the files.

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 _____. 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[5].

Pursuant to 41 CFR §§ 60-1.12(e), 60-300.80(c), and 741.80(c), failure to preserve complete and accurate records constitutes non-compliance with your obligations as a federal contractor or subcontractor. In addition, 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.

41 CFR §§ 60-1.12(e), 60-300.80(c) and 741.80(c): "Any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later." Read more at:

[https://www.ecfr.gov/current/title-41/part-60-1/section-60-1.12#p-60-1.12\(a\)](https://www.ecfr.gov/current/title-41/part-60-1/section-60-1.12#p-60-1.12(a))

You should be aware that OFCCP may initiate enforcement proceedings if you fail to submit the AAPs and Itemized Listing information within 30 calendar days of your receipt of the letter. 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 the U.S. Department of Labor, 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, Executive Order 12600, and the U.S. Department of Labor's FOIA regulations at 29 CFR § 70.26.[6] OFCCP will treat records provided by the contractor as confidential to the maximum extent the information is exempt from public disclosure under FOIA. OFCCP will evaluate all information requests pursuant to the public inspection and disclosure provisions of FOIA and the U.S. Department of Labor's implementing regulations and will safeguard and protect personally identifiable information to the maximum extent allowable under the law in accordance with the Privacy Act. Please contact **[INSERT CO name/ADD name]** at **(XXX) XXX-XXXX** if you have any questions concerning the compliance evaluation.

Sincerely,

(Name of District Director)
District Director

Enclosure (1)
Itemized Listing

ITEMIZED LISTING

AAP for Women & Minorities

Executive Order 11246:

1. An organizational display or workforce analysis prepared according to 41 CFR 60-2.11.

Your AAP for Women & Minorities by default includes the organizational display instead of the workforce analysis because the latter report displays salary information. When reviewing this report, watch for and be prepared to explain lopsided distribution of women and minorities among departments. Inform department managers that they could be interviewed by your assigned compliance officer.

2. The formation of job groups (covering all jobs) consistent with criteria given in 41 CFR § 60-2.12.

Your AAP for Women & Minorities includes a Job Group Analysis that satisfies this requirement. Ensure that employee totals reflect exactly the demographics as of your snapshot date. These totals affect multiple reports, so it is important that they are

3. For each job group, a statement of the percentage of minority and female incumbents as described in 41 CFR § 60-2.13.

The percentages of women and minorities are displayed on the Job Group Analysis in the AAP for Women & Minorities.

4. For each job group, a determination of minority and female availability pursuant to 41 CFR § 60-2.14.

When reviewing the Availability Analysis in the AAP for Women & Minorities, ensure that the weights on and sources for recruiting factors reflect how your company has recruited in the past or plans on recruiting in the future. Also review the census code assignments in the Job List in your Support Data document. If the resulting availability seems unlikely, your CO may begin to ask questions.

5. For each job group, the comparison of incumbency to availability as explained in 41 CFR § 60-2.15.

The Annual Goals Report in your AAP for Women & Minorities displays the comparison of incumbency to availability.

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.

Placement goals are reported in the Annual Goals Report in your AAP for Women & Minorities. If the incumbents in the Job Group Analysis are correct and as long as the recruitment weights and sources in the Availability Analysis make sense, a Current Placement Goal of 0.0% is nothing to be concerned about. See the next item for further explanation of what to do if you have goals of higher than 0.0%.

7. Pursuant to 41 CFR § 60-2.17(c), provide documentation demonstrating the development and execution of action-oriented programs designed to correct any problem areas identified pursuant to 41 CFR § 60-2.17(b). The documentation should cover action-oriented programs addressing problems areas identified for the immediately preceding AAP year.

Where you do see goals of higher than 0.0%, review your Action Oriented Programs section and update it with specific actions your company aims to take to address any lopsided distribution of women and minorities in the Organizational Display (item 1 above), any significant differences in the Disparity Analyses (see item 18 below), any compensation disparity (see item 19 below) and any placement goals (item 6 above). Remove any irrelevant items from the Action Oriented Programs section, and add any other items to the Selection Process, Recruitment, and Promotion sections that will demonstrate your company's commitment to address any areas that could potentially be perceived as problem areas.

AAP for Individuals with Disabilities

Section 503

8. Documentation of appropriate outreach and positive recruitment activities reasonably designed to effectively recruit qualified individuals with disabilities, and an assessment of the effectiveness of these efforts as provided in 41 CFR § 60-741.44(f). This includes documentation of all activities undertaken to comply with the obligations at 41 CFR § 60-741.44(f), the criteria used to evaluate the effectiveness of each effort, and whether you found each effort to be effective. The documentation should also indicate whether you believe the totality of your efforts were effective. In the event the totality of your efforts were not effective in identifying and recruiting qualified individuals with disabilities, provide detailed documentation describing your actions in implementing and identifying alternative efforts, as provided in 41 CFR § 60-741.44(f)(3).

The report that addresses this item is the Assessment of Outreach & Recruitment Activities report in your AAP for Individuals with Disabilities. Try to document as many recruitment activities as you can and ensure that every column is populated. It is fine to list contact with your state Employment Service Delivery System (state job bank), but acknowledge that you are aware that it is a required activity per CFR 60-300.2(j). If you have only one or two sources to list, in your summary of the effectiveness of the totality of your efforts, explain why, whether it is because of a lack of sources or candidates in your geographic area, or whether your company aims to explore outreach beyond those resources available locally. Explain how you plan to remedy the lack of efforts. You may edit (particularly the last sentence of) the narrative Assessment of External Outreach and Recruitment Efforts page that precedes the Assessment report, or you may attach a document that describes the effectiveness of the totality of your efforts.

To search for potential recruitment sources, visit the OFCCP's Employment Resource Referral Directory at <https://www.dol.gov/agencies/ofccp/compliance-assistance/outreach/errd>

9. Documentation of all actions taken to comply with the audit and reporting system requirements described in 41 CFR § 60-741.44(h).

Review the Audit and Reporting System section of your Individuals with Disabilities AAP and provide documentation to support your company's compliance with these requirements. The first three and the fifth items listed by default are arguably covered by preparation of the AAP, but item 4 on the list may require more investigation and documentation such as emails or memos inviting employees to company-sponsored activities, and examples of literature of any accommodations made to allow disabled employees to attend.

10. Documentation of the computations or comparisons described in 41 CFR § 60-741.44(k) for the immediately preceding AAP year and,

The Data Collection Analysis is found in your Support Data document*. The report shows the number of applicants who self-identified as individuals with disabilities, the total number of job openings and total number of jobs filled, the total number of applicants for all jobs, the number of applicants with disabilities hired, and the total number of applicants hired. While most totals on this report are straightforward and can easily be compared to the source data, the Total Openings includes all hires and promotions (to), as well as any requisitions that had no associated hires. If requisitions were not provided in the data used, then you will see only the sum of hires and promotions (to). Review the totals on this report to ensure that they are accurate.

**This report is separated from the AAP for Protected Veterans because 41 CFR § 60-300.41 requires that the AAP for Protected Veterans be available for viewing by employees and applicants; the sensitive data, or "data metrics," in the Data Collection Analysis are not required to be disclosed.*

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.

If you determine that you are six months or more into your AAP year, gather the first six months' (or more) of [hires and promotions \(to\)](#) data that includes disability status to include a Mid-Year Data Collection Analysis report with your other Mid-Year reports.

11. The utilization analysis evaluating the representation of individuals 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 any underutilization of individuals with disabilities is identified, provide a description of the steps taken to determine whether and where impediments for equal employment opportunity exist in accordance with 41 CFR § 60-741.45(e). Pursuant to 41 CFR § 60-741.45(e) and (f), this description shall include your assessment of personnel processes, the effectiveness of your outreach and recruitment efforts (if different than Item 8), the results of your affirmative action program audit, any other areas that might affect the success of the affirmative action program,

The Utilization Summary of Individuals with Disabilities report runs a comparison of the total number of employees by job group who have self-disclosed their status as individuals with disabilities. The Utilization Goal % on the report is provided by the DOL as the representative percentage of Americans with disabilities available to work; ideally, your workforce should meet the utilization goal in each of its job groups. Because these demographics are entirely dependent on self-disclosure using a binary reporting system, it is expected that your company takes steps to make the work environment friendly and inviting to individuals with disabilities so that they may feel safe in disclosing their disability status.

If any job group does not meet the 7% individuals with disabilities goal, in the Identification of Problem areas, summarize and make reference to your company's assessment of personnel processes (item 25 below), the effectiveness of your outreach and recruitment efforts (item 8 above), the results of your AAP audit (item 9 above), and any other areas that might affect the success of the AAP.

and a description of action-oriented programs developed and executed to correct any identified problem areas. Provide this information for the immediately preceding AAP year.

Review and edit the Action Oriented Programs section of the AAP for Individuals with Disabilities, taking special precaution with the final sentence in this section.

If you are six months or more into your current AAP year on the date you receive this listing, provide the information that reflects your progress for at least the first six months of the current AAP year.

If you determine that you are six months or more into your AAP year, gather the first six months' (or more) of [hires and promotions \(to\)](#) data that includes disability status and run a Mid-Year Utilization Progress report with your other Mid-Year reports.

VEVRAA

AAP for Protected Veterans

12. Documentation of appropriate outreach and positive recruitment activities reasonably designed to effectively recruit qualified protected veterans, and an assessment of the effectiveness of these efforts as provided 41 CFR § 60-300.44(f). This includes documentation of all activities undertaken to comply with the obligations at 41 CFR § 60-300.44(f), the criteria used to evaluate the effectiveness of each effort, and whether you found each effort to be effective. The documentation should also indicate whether you believe the totality of your efforts were effective. In the event the totality of your efforts were not effective in identifying and recruiting qualified protected veterans, provide detailed documentation describing your actions in implementing and identifying alternative efforts, as provided in 41 CFR § 60-300.44(f)(3).

The report that addresses this item is the Assessment of Outreach & Recruitment Activities report in your AAP for Protected Veterans. Try to document as many recruitment activities as you can and ensure that every column is populated. It is fine to list contact with your state Employment Service Delivery System (state job bank), but acknowledge that you are aware that it is a required activity per CFR 60-300.2(j). If you have only one or two sources to list, in your summary of the effectiveness of the totality of your efforts, explain why, whether it is because of a lack of sources or candidates in your geographic area, or whether your company aims to explore outreach beyond those resources available locally. Explain how you plan to remedy the lack of efforts. You may edit (particularly the last sentence of) the narrative Assessment of External Outreach and Recruitment Efforts page that precedes the Assessment report, or you may attach a document that describes the effectiveness of the totality of your efforts.

To search for potential recruitment sources, visit the OFCCP's Employment Resource Referral Directory at <https://www.dol.gov/agencies/ofccp/compliance-assistance/outreach/errd>

13. Documentation of all actions taken to comply with the audit and reporting system requirements described in 41 CFR § 60-300.44(h).

Review the Audit and Reporting System section of your Protected Veterans AAP and edit the section or in a separate attachment provide documentation to support your company's compliance with these requirements. The first three and the fifth items listed by default are arguably covered by preparation of the AAP, but item 4 on the list may require more investigation and documentation such as emails or memos inviting employees to company-sponsored activities, and examples of literature welcoming veterans and their families to attend.

14. Documentation of the computations or comparisons described in 41 CFR § 60-300.44(k) for the immediately preceding AAP year and,

The Data Collection Analysis is found in your Support Data document*. The report shows the number of applicants who self-identified as protected veterans, the total number of job openings and total number of jobs filled, the total number of applicants for all jobs, the number of veteran applicants hired, and the total number of applicants hired. While most totals on this report are straightforward and can easily be compared to the source data, the Total Openings includes all requisitions and promotions (to), as well as any hires that had no associated requisitions. If requisitions were not provided in the data used, then you will see only the sum of hires and promotions (to). Review the totals on this report to ensure that they are accurate.

**This report is separated from the AAP for Protected Veterans because 41 CFR § 60-300.41 requires that the AAP for Protected Veterans be available for viewing by employees and applicants; the sensitive data, or “data metrics,” in the Data Collection Analysis are not required to be disclosed.*

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.

If you determine that you are six months or more into your AAP year, gather the first six months’ (or more) of [hires and promotions \(to\)](#) data that includes veteran status and run a Mid-Year Benchmark Progress with your other Mid-Year reports.

15. Documentation of the hiring benchmark adopted, the methodology used to establish it if using the five factors described in 41 CFR § 60-300.45(b) (2) for the current AAP year.

The Hiring Benchmark for Protected Veterans in the AAP for Protected Veterans by default includes the national percentage of veterans in the civilian labor force that is published and updated annually on the OFCCP website. Contractors may develop their own benchmark by taking [five factors into consideration](#); if you choose to develop your own benchmark, this item requires that you provide documentation of the methodology used to determine the benchmark.

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.

If you determine that you are six months or more into your AAP year, gather the first six months’ (or more) of [hires and promotions \(to\)](#) data that includes veteran status to include a Benchmark Progress report with your other Mid-Year reports.

Support Data

Support Data

16. Copies of Component 1 of your Employer Information Report EEO-1 (Standard Form 100 Rev.) for the last three years.[7] If you are a post-secondary institution, submit copies of your Integrated Postsecondary Education Data System (IPEDS) Human Resources Survey Component data collection reports for the last three years.

Covered federal contractors must annually file an EEO-1 report and covered post-secondary institutions must annually file IPEDS reports. Your company likely has the EEO-1 or IPEDS reports on file, but you may log in to the [EEO-1 Portal](#) or the [IPEDS portal](#) to obtain the required three years' worth of reports.

17. 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.

Your company's collective bargaining agreement can be obtained from its own records or from your union representatives. Employers and/or unions may voluntarily submit their CBA's to the Office of Labor-Management Standards, and you may search for your company's CBA's on their Online Public Disclosure Room. Be aware that because submission of CBA's is voluntary and because both employer and union must agree to post their CBA's, you may not find it on the OPDR.

18. Data on your employment activity (applicants, hires, promotions, terminations, and incumbency) for the immediately preceding AAP year. You should present this data by job group (as defined in your AAP) or by job title.[8]

The Support Data document contains Disparity Analyses, which are the reports that meet item 18's requirements. Yocom & McKee's *non-audit* Disparity Analyses display totals and results by Job Group. The YM Disparity Analyses **for audit** display totals but not test results*, and they are run by Job so that pre-determined groups are not presented to the OFCCP. Be aware that your CO may request source data so that they may run their own analyses; be sure to use the source data that was used in the reports submitted to the CO. Consult with your company's legal counsel for advice on whether or how to comply with such requests. Before running your reports for audit submission:

- Confirm the integrity of the data used to run your reports,
- review the totals on your reports and correct discrepancies,
- review the results** of the original reports, and if disparity exists,
- run alternative reports to analyze data from multiple angles.

**If you see test results on your Disparity Analyses for submission, please contact us.*

***Watch for a "Yes" under the "statistically Significant?" column. Where you statistically significant disparity, consider running supplemental reports for your own scrutiny and not for submission. Each item below explains what specifically to watch for.*

For the immediately preceding AAP year, this report must include information that reflects:

If you are six months or more into your current AAP year on the date you receive this listing, please also submit data for items (a) through (e), above [sic], for at least the first six months of the current AAP year.

If you determine that you are six months or more into your AAP year, gather the first six months' (or more) of applicant, hire, promotion, and termination data to include Mid-Year Disparity Analyses reports with your other Mid-Year reports.

- 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.[9] 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.

Items a. and b. are analyzed together in one report: Disparity Analysis – Applicants & Hires.

Review data integrity: ensure that the individuals that you have included in the analysis meet the Internet Applicant criteria; remove applicant data for records that do not meet all four Internet Applicant criteria.

Review totals: do the totals look right (i.e. are there 10,000 applicant records when source data has only 5,000)?; Are there any duplicates? Investigate and correct discrepancies.

Review results: when reviewing results after the totals and data integrity are confirmed, search for areas of statistically significant disparity. If your reports exhibit disparity, consider running for internal purposes alternative analyses to test whether disparity is still exhibited from different angles.

Alternative analyses: consider adding records for applicants outside of the required date range to test for disparity; consider adding as applicants any internal candidates considered for promotion; run your analysis by job and/or requisition for each iteration.

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.

Review data integrity: ensure that you have included not only hires, but also rehires in your totals.

Review totals: are the totals on your reports reflective of source data; are there any duplicates?

Review results: if your reports exhibit disparity, consider running for internal purposes alternative analyses to test whether disparity is still exhibited.

Alternative analyses: consider adding records for individuals offered positions but who subsequently declined; run your analysis by job and/or requisition for each iteration.

c. Promotions: Provide documentation that includes established policies and describes practices related to promotions.

The OFCCP's Federal Contract Compliance Manual (FCCM) defines a Promotion as "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."

Because the FCCM is not to be mistaken for regulation, contractors may define what they themselves consider to be promotions. This item requires submission of documentation of established policies and practices related to promotions. Include this documentation as a separate attachment.

Additionally, for each job group or job title, provide the total number of promotions by gender and race/ethnicity. Where the contractor maintains data on whether the promotion is competitive or non-competitive, it may also provide this information in its submission.

Items *c* (promotions) and *d* (terminations) are both compared to prior year incumbents, which are required by item *e*.

Review data integrity: ensure that your reports include only individuals who have met your company's definition of a "promotion"; ensure that your data includes only promotions out of and promotions within each job group; ensure that your promotions include both competitive and non-competitive promotions.

Review totals: are the totals on your reports reflective of source data; are there any duplicates?

Review results: if your reports exhibit disparity, consider running for internal purposes alternative analyses to test whether disparity is still exhibited.

Alternative analyses: consider adding records for individuals offered positions but who subsequently declined; run separate analyses for competitive versus non-competitive promotions; run your analysis by job and/or requisition for each iteration.

- 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, also include the department and job group from which the person(s) were terminated.

Review data integrity: ensure that your reports include both voluntary and involuntary terminations.

Review totals: are the totals on your reports reflective of source data; are there any duplicates?

Review results: if your reports exhibit disparity, consider running for internal purposes alternative analyses to test whether disparity is still exhibited.

Alternative analyses: consider running separate analyses for voluntary and involuntary terminations; run your analysis by job and/or requisition for each iteration.

The Disparity Analysis – Terminations report for Audit is run by job title. Item 18d indicates that when terminations are presented by job title, departments and job groups from which the person were terminated must also be provided. The terminations report by job title displays the job group of each job title, but because job titles can be scattered among many departments, it is not possible to include departments on the Terminations Report. Should your assigned CO follow up with a request for departments, contact Yocom & McKee to find out about obtaining a listing of terminations that includes departments.

- e. For each job title or job group, provide the total number of employees, by gender and race/ethnicity, as of the start of the immediately preceding AAP year.

The Disparity Analyses for Promotions and Terminations include these totals by job title, which reflect a snapshot of employees as of the beginning of the prior AAP year. If these totals do not reflect the totals exactly as they were reported in the prior AAP year, adjust them as necessary.

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 (1) the date of the organizational display or workforce analysis and (2) as of the date of the prior year's organizational display or workforce analysis. For each snapshot, provide a single file that contains for each employee, at a minimum, employee name or numerical ID, gender, race/ethnicity, hire date, job title, EEO-1 Category and job group.[10] If the requested data is maintained in an accessible electronic format, please provide it electronically.

The Employee Level Compensation Data (ELCD) report in the Support Data document satisfies this requirement for the current year, and an ELCD for the prior year can be run separately. The ELCD report is run using the same data reported in each year's Organizational Profile, (Organizational Display or Workforce Analysis), which should already include full-time, part-time, and true temporary employees (including contract, per diem, or day labor). The ELCD report includes each employee's numerical ID, gender, race/ethnicity (using the seven EEO-1 race categories), hire date, job title, EEO-1 Category and job group.

Additionally, for each employee, provide the following information, as applicable. If the contractor does not maintain any of these items, please notate that in your submission:

- a. Base salary and or wage rate, annualized base compensation, and hours worked in a typical workweek. Other compensation or adjustments to salary such as, but not limited to, bonuses, incentives, commissions, merit increases, locality pay or overtime shall also be identified separately for each employee.

The ELCD report in the Support Data includes this information for the current year if it was provided for reporting. The ELCD for the prior year is a separate report that can also display this information if it was provided. Your response letter must note whether items not show are not maintained.

- b. Provide relevant data on the factors used to determine employee compensation such as education, experience, time in current position, duty location, geographical differentials, performance ratings, department or function, job families and/or subfamilies, and salary level/band/range/grade.

The ELCD report in the Support Data includes this information for the current year if it was provided for reporting. The ELCD for the prior year is a separate report that can also display this information if it was provided. Your response letter must note whether items not show are not maintained.

- c. Provide documentation and policies related to the contractor's compensation practices, including those that explain the factors and reasoning used to determine compensation (e.g., policies, guidance, or trainings regarding initial compensation decisions, compensation adjustments, the use of salary history in setting pay, job architecture, salary calibration, salary benchmarking, compensation review and approval, etc.).

Because policies and practices surrounding compensation practices are specific to each company, there is no Yocom & McKee report or narrative that can explain your company's compensation systems. In a separate document describe your company's policies and practices, and list factors and reasoning used to determine compensation.

20. Information on your E.O. 11246 affirmative action goals 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 placement 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 all placement goals not attained, describe the specific good faith efforts made to remove identified barriers, expand equal employment opportunity, and produce measurable results.

The Goals Progress Report in the Support Data document provides all requirements in item 20. If any prior goals were not met provide documentation of good faith efforts as an attachment to your response email.

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 progress on goals established in your current AAP year and describe your implementation of action-oriented programs designed to achieve these goals.[11]

If you determine that you are six months or more into your AAP year, a Mid-Year Goals Progress report should be included with your other Mid-Year reports.

21. Identify and provide information and documentation of policies, practices, or systems used to recruit, screen, and hire, including the use of artificial intelligence, algorithms, automated systems or other technology-based selection procedures.

Because policies and practices surrounding recruiting, screening and hiring are specific to each company, there is no report or narrative that can explain your company's approach to the use of AI, algorithms, automated systems, or other technology-based selection procedures. Describe your company's policies and practices in a separate attachment to your submission. At the time of this writing, the OFCCP does not have an FAQ describing what it expects in a response to this item, but you are encouraged to search [the FAQ](#) to see if that has changed.

22. Documentation that the contractor has satisfied its obligation to evaluate its “compensation system(s) to determine whether there are gender-, race-, or ethnicity-based disparities,” as part of the contractor’s “in-depth analyses of its total employment process” required by 41 CFR 60-2.17(b)(3). Include documentation that demonstrates at least the following:

If your company had a compensation analysis performed independently, provide documentation that provides answers for the items below. If your company has not had an independent compensation analysis performed, contact Yocom & McKee to find out about how to obtain a Cohort Analysis. It is strongly recommended that neither an independent compensation analysis nor a Cohort Report be included in audit submission. If the Cohort Report is present in your Support Data document prepared for audit submission, contact us for guidance on its removal before you respond to the audit.

Whether your company had a compensation analysis performed independently or whether you obtained a Cohort Report from Yocom & McKee, address items a through e below in text either in your response letter or in a separate attachment. If you obtained a Cohort Report from Yocom & McKee, it would be in your best interest to review it to try to determine whether any gender-, race-, or ethnicity-based disparities exist. Alternatively, your company counsel can contact us to ask about more in-depth compensation reporting.

- a. When the compensation analysis was completed;

Specify the exact date when you obtained and reviewed the Cohort Report or when you had an analysis performed. Alternatively, refer to the ELCD document and allow the CO to draw the conclusion that the report was completed as of the date shown in the header.

- b. The number of employees the compensation analysis included and the number and categories of employees the compensation analysis excluded;

The number of employees in your independent or Cohort Analysis report should match the totals shown in the ELCD for audit. The number of employees excluded should be zero unless your or HR’s role limits the disclosure of compensation from one or more executive-level employees, in which case state that fact in your response.

- c. Which forms of compensation were analyzed and, where applicable, how the different forms of compensation were separated or combined for analysis (e.g., base pay alone, base pay combined with bonuses, etc.);

The Cohort Report by default lists base salaries for employees, but if your company had an independent compensation analysis performed, describe the forms of compensation and how they were separated or combined for analysis.

- d. That compensation was analyzed by gender, race, and ethnicity; and

The Cohort Report by default lists the race and gender of employees, but if your company had an independent compensation analysis performed, explain whether gender, race and ethnicity were analyzed.

- e. The method of analysis employed by the contractor (e.g., multiple regression analysis, decomposition regression analysis, meta-analytic tests of z-scores, comparative regression analysis, rank-sums tests, career-stall analysis, average pay ratio, cohort analysis, etc.).

If an independent compensation analysis was performed for your company, indicate the method of analysis employed. If relying on a Yocom & McKee Cohort Report, then "Cohort Report" is the method of analysis.

23. Copies of reasonable accommodation policies, and documentation of any accommodation requests received and their resolution, if any, for the immediately preceding AAP year. If you are six months or more into your current AAP year when you receive this listing, provide this information for at least the first six months of the current AAP year.

Because policies and practices surrounding accommodation of disabilities are specific to each contractor, Yocom & McKee cannot provide this information. Documentation of formal, published policies and/or documentation of any accommodation requests should be provided as a separate attachment. If you determine that you are six months into your current AAP year, provide as a separate attachment any documentation pertaining to the first six months of the current AAP year. It is imperative that management staff be familiar with these policies.

24. Copies of equal employment opportunity (EEO) policies, including antiharassment policies, policies on EEO complaint procedures, and policies on employment agreements that impact employees' equal opportunity rights and complaint processes (e.g., policies on arbitration agreements). Please provide this information for policies in place for the immediately preceding AAP year. If you are six months or more into your current AAP year when you receive this listing, provide this information for at least the first six months of the current AAP year.

The EEO Policy and Harassment pages in either the AAP for Individuals with Disabilities or the AAP for Protected Veterans satisfy this requirement. It is not prohibited to add to these sections, but it is prohibited to remove parts of this section. It is imperative that management staff be familiar with these policies. If your policies are published in an employee handbook, or if policies have changed in the first six months of your current AAP year, include these as separate attachments.

25. The contractor's most recent assessment of its personnel processes, as required by 41 CFR § 60-300.44(b) and § 60-741.44(b). This assessment shall include, at a minimum, a description of the assessment, any impediments to equal employment opportunity identified through the assessment, and, any actions taken, including modifications made or new processes added, as a result of the assessment.

The Review of Personnel Processes appears twice in the Support Data document: once in the section for Individuals with Disabilities, and once in the section for Protected Veterans. It is not prohibited to add to these sections but edit parts of the section with the guidance of company counsel. It is imperative that management staff be familiar with these policies.

26. The contractor's most recent assessment of its physical and mental qualifications, as required by 41 CFR §§ 60-300.44(c) and 60-741.44(c), including the schedule of the assessment and, any actions taken or changes made as a result of the assessment.

The Physical and Mental Qualifications section appears twice in the Support Data document: once in the section for Individuals with Disabilities, and once in the section for Protected Veterans. It is not prohibited to add to these sections but edit parts of the section with the guidance of company counsel. It is imperative that management staff be familiar with these policies.

Public Burden Statement:

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. Your response is required as a condition of your Federal contract or subcontract pursuant to 41 CFR Chapter 60. The estimated public reporting burden for this information collection is 37.5 hours, including the time for evaluating instructions, searching existing data sources, gathering and maintaining the data needed, and completing and evaluating the collection of information. If you have comments regarding the estimated reporting burden, or suggestions for reducing the burden, please send them to the Office of Federal Contract Compliance Programs (OFCCP), Division of Policy and Program Development, 200 Constitution Avenue, N.W., Room C-3325, Washington, D.C. 20210, and reference OMB Control Number 1250-0003.

- [1] 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.
- [2] 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.
- [3] 41 CFR §§ 60-1.20(a), 60-300.60(a), and 60-741.60(a).
- [4] 41 CFR §§ 60-300.81 and 60-741.81 require contractors to provide records and other information in any of the formats in which they are maintained, as selected by OFCCP.

- [5] 41 CFR §§ 60-1.12(a), 60-300.80(a), and 60-741.80(a).
- [6] 41 CFR §§ 60-1.20(g); 60-300.81; 60-741.81; Freedom of Information Act, *as amended*, 5 U.S.C. § 552 (2009).
- [7] 41 CFR § 60-1.7.
- [8] 41 CFR §§ 60-1.12, 60-21 to 2.12, 60-2.17(b)(2) and (d)(1), 60-3.4, and 60-3.15.
- [9] 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 Report.
- [10] 41 CFR § 60-2.17(b)(3) and (d).
- [11] 41 CFR §§ 60-1.12 and 60-2.17(c).

End CR/ FAAP CR/ CMCE Scheduling Letter

What Happens After I Submit Requested Information?

A week or two following the submission of your affirmative action plans and required information to the OFCCP, consider emailing or calling your Compliance Officer to ensure that the documentation was received, and to ask if he or she has any questions that you can answer. Your courtesy call gives the audit a good start and may help prevent an on-site review. Answer the Compliance Officer's questions in a thorough and friendly manner, but do not be afraid to ask for clarification on requests that you or your counsel do not completely understand. If your Compliance Officer requests additional information or data, be certain to get the request in writing, and be certain to submit requested information and data in writing.

When Can I Expect to Hear from My Compliance Officer?

The OFCCP is not required to respond within any given amount of time, but do not be surprised if an audit lasts months or even years. As stated on page one of a CR, FAAP CR, or CMCE scheduling letter, an audit may progress in three phases. A summary of the three phases appears below, but for more in-depth explanation of audits, please see Chapters 1 and 2 of the [Federal Contract Compliance Manual](#) (FCCM) that Compliance Officers must follow:

- The **Desk Audit** phase begins upon receipt of your AAP and support data. The AAP and support data are examined to determine whether all the required elements are present and meet agency standards. This phase is usually conducted at OFCCP offices and may last from a few days to months.
- An **On-Site Review** may be conducted at your facility following the Desk Audit. An On-Site normally involves reviewing personnel policies and employment activities. Employees and supervisors are often interviewed during On-Sites.
- Finally, an **Off-Site Analysis** may be completed when the OFCCP feels it is necessary to further review information gathered during the On-Site phase.

How Can I Prepare for an On-Site Review?

In the event of an On-Site Review, the Compliance Officer will want a tour of your facility and an interview with the Chief Executive or top-level manager responsible for your site.

Management

Before the on-site occurs, management needs to be briefed about the OFCCP and the purpose of the visit. They should be prepared to answer questions in their areas of expertise. Warn them that the Compliance Officer may interview them or their employees while on-site. Encourage managers to remain open and friendly toward the Compliance Officer should they be selected for an interview. Should any employees be selected for an interview, inform them on the day of the on-site visit that the interview is routine and that they are in no trouble with the company or with the OFCCP.

Facility Tour

Consider the path that you will take on the tour. The Compliance Officer will be looking for several items, including:

- (1) The Know Your Rights: Workplace Discrimination is Illegal (formerly “EEO is the Law”), Pay Transparency Nondiscrimination Provision, and Executive Order 13496 Notice of Employee Rights posters are displayed where employees and applicants will see them.
- (2) The Veterans and Individuals with Disabilities Equal Opportunity Policy Statement is posted on company bulletin boards. There is no requirement that the policy be signed and dated, but OFCCP Compliance Officers often encourage this. The EO Policy Statement is not required to mention women or minorities, but it is also not prohibited.
- (3) Notice posted of where and when the AAP for protected veterans and the AAP for individuals with disabilities is available for inspection.
- (4) That the facility is disabled accessible and that there are accessible restrooms.
- (5) That women and minorities are integrated into all departments/areas.

Executive Meeting

The Compliance Officer will normally ask for an informal meeting with the Chief Executive of the site. You should take this opportunity to communicate to the Compliance Officer your company’s commitment to affirmative action from the very top of the organization. Any programs or successes of which you are particularly proud should be reserved for your Chief Executive to discuss.

Items to consider including in this meeting:

1. Recent additions of women, minorities, veteran and disabled individuals to executive positions,
2. How the Chief Executive monitors affirmative action compliance,
3. Any innovative or unique actions taken or programs that help to advance opportunities for women and minorities, veterans and disabled individuals, and
4. Plans for future programs and opportunities.

Employment Data

Prepare an office for the Compliance Officer. This office should include a desk, chair, and phone. Be prepared to be the Compliance Officer’s primary contact or designate an individual in the Human Resources department to fill the role.

During the auditor’s visit, provide photocopies, not originals, of all requested documents, and provide them only if they are relevant to the investigation and pertinent to compliance. All data furnished to the Compliance Officer should be logged and briefly reviewed before turning it over. When the Compliance Officer requests *specific* data, it should be reviewed to anticipate

where the investigation might lead. If there appears to be a problem, but you can identify a reasonable explanation, you should provide the Compliance Officer the explanation along with the data. It is much easier to head off the investigation at the onset than try to talk the OFCCP out of an investigation to which they have already committed time and resources.

Exit Interview

At the conclusion of the On-Site phase of a compliance evaluation, the Compliance Officer will schedule an exit conference. By virtue of the Compliance Officer's requests, you should be aware of which violations and concerns the Compliance Officer has well before the Exit Interview. Action to correct mistaken interpretations of data should be taken at the first opportunity. Do not wait for the Exit Interview to correct mistakes. The Exit Interview gives you one last chance to present evidence and arguments against unresolved issues.

What Are the Possible Conclusions of the Evaluation?

Closure Letter

An Audit Closure Letter is every contractor's desired conclusion of an audit. If a Closure Letter is issued, no further action is to be taken and, by policy, your organization should not be reviewed again by OFCCP for at least 2 years. Otherwise:

- 1) The OFCCP may issue a Pre-Determination Notice (PDN) for preliminary discrimination findings and provide you with the workforce data necessary to replicate statistical analyses used in the preliminary findings. The PDN then provides your organization with a formal opportunity to provide non-discriminatory explanations for the disparities.
- 2) Audit Closure Letter,
- 3) Conciliation Agreement, or
- 4) Recommendation for Enforcement.

A Conciliation Agreement usually includes reporting requirements. If you disagree with the cited deficiencies, you should respond in writing, presenting your arguments and evidence.

If you refuse to sign a Conciliation Agreement, the OFCCP can recommend enforcement to the Solicitor of Labor. The Solicitor then gives his/her opinion regarding whether a violation that merits enforcement has occurred. The OFCCP can then file a complaint with an Administrative Law Judge (ALJ) from the Department of Labor. A trial is held before the ALJ and recommended findings, conclusions and decisions are issued. The OFCCP or your organization can file an appeal to an Administrative Appeals Board. After the Administrative Appeals Board issues their final order, you may appeal to Federal District Court. From Federal District Court, the OFCCP or your organization can appeal to the US Court of Appeals and then to the US Supreme Court.

The OFCCP's Enforcement Remedies

1. Reinstatement into a position,
2. Back pay with interest,
3. Front pay with interest,
4. Injunctions,
5. Class action relief.
6. In addition, your organization can be debarred from further federal contracts, and payments on current contracts can be halted.
7. The EEOC uses many of the same remedies for Title VII violations.

Early Resolution

If deficiencies are identified during a compliance evaluation, you can voluntarily resolve them, and will in effect receive a five-year moratorium from further compliance evaluations. There are three types of deficiencies that are covered by the Early Resolution Directive:

1. *Non-Material Violations*

This covers issues with no indicators of potential discrimination, lack of good faith efforts or other material non-discrimination violations. Examples might be failure to correctly annotate employees or failure to post the Know Your Rights poster where employees and applicants can readily view it. These types of violations are resolved in a Closure Letter without a conciliation agreement or reporting requirement.

2. *Material, Non-Discrimination Violations*

This covers more serious violations such as record keeping, applicant tracking, failure to implement audit and reporting systems, and failure to conduct self-analysis. In these cases the OFCCP will propose an Early Resolution Conciliation Agreement with Company-Wide Corrective Action ("ERCA"). If your company is a multiple-establishment contractor, you must review all establishments for similar violations and take corrective action. Progress reports will be made to the OFCCP. The original audited establishment will not be subject to a new compliance evaluation for five years, but other establishments of your organization may be audited.

3. *Material, Discrimination Violations*

Where there are alleged material discrimination violations, the OFCCP will propose a companywide ERCA within 14 days of completing the desk audit. If your organization agrees, semi-annual progress reports will be sent to the OFCCP for five years and all of your organization's covered establishments will be excluded from any new compliance evaluations during that time frame.

You are highly advised to seek legal assistance before signing any ERCA.

Help

Response Letter

Download Yocom & McKee's [Sample Response Letter](#) for guidance on responding to each item on your scheduling letter.

Questions

Contact Yocom & McKee, Inc.

If you have questions about your OFCCP audit, please contact Yocom & McKee, Inc. at support@yocom-mckee.com or 303-277-0692, extension 2.