

MAAAO / BILG Joint Meeting – Linthicum, MD
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OFCCP's New Scheduling Letter:
Anticipating the New Desk Audit
Submission

Littler[™]

presented by



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The OFCCP's Proposed Letter

☐ Two new requests

- Leave Policies - **New** itemized listing **paragraph 8**
- Section 503/4212 - **New** itemized listing **paragraph 13**

☐ Three revised requests

- Collective Bargaining Agreements - Now itemized listing paragraph 9 (formerly paragraph 8)
- Employment Activity - Now itemized listing paragraph 11 (formerly paragraph 10)
- Compensation - Now itemized listing paragraph 12 (formerly paragraph 11)

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Agenda –

We're going to take them in a different order than the letter

- ☐ **Employment Data (new 11)**
- ☐ **Compensation Data (new 12)**
- ☐ **Collective Bargaining Agreements (new 9)**
- ☐ **Leave Policies (new 8)**
- ☐ **VETS-100/VETS-100A (new 13)**

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Employment Activity – New 11

- ☐ Old letter asked for transaction data by job group
- ☐ New letter asks for employment activity (applicants, hires, promotions and terminations) by job group AND by job title
- ☐ For each job group and job title, applicants for whom race/sex is not known should be included in the data submitted
- ☐ Promotions: include “the actual pool of candidates who applied or were considered for a promotion” and include a definition of promotion
- ☐ Terminations: include “the actual pool of candidates who were considered for terminations”

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Recommendation #1 - Summaries

- ☐ For the annual AAP, continue to prepare summaries of applicant, hire, promotion and termination data by minority/nonminority groups.
- ☐ The regulations prescribing the required contents of written AAPs have not changed in Part 60-2, and they speak only in terms of females and all minorities.
- ☐ Section 60-2.17: “must perform in-depth analyses of its total employment process” and “must evaluate . . . Selection, recruitment, referral and other procedures to determine whether they result in disparities in the employment or advancement of minorities or women.”
- ☐ Itemized Listing, footnote 6: “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.”

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Recommendation #2 - IRAs

- ◉ **Under the protection of attorney-client privilege, prepare job group impact ratio analyses:**
 - Minority versus White (the way the summaries appear in the AAP)
 - Each race versus White
 - Each race versus its non-race (but excluding 2 or more races)
 - Hispanics versus non-Hispanics (including Whites)
 - Blacks versus non-Blacks (including Whites), etc.
 - Will tell you which is the most-favored race
 - Every other race versus most favored race
- ◉ **Prepare impact ratio analyses by title**
 - If a job title has fewer than 5 selections, not critical to run title by title analyses

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Recommendation #2 (cont'd)

- ◉ **Under the protection of attorney-client privilege, if a job group or job title shows a statistically significant impact, look for simplest explanations first**
 - control for job requisition or job opening
 - don't lose sight of statistical significance—the 1/20 or 5% threshold
 - may be a function mostly of running so many analyses
 - the more you run, the more likely one or more will “pop”
 - difference between 2 standard deviations and 3+ standard deviations

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Promos and Terms

“OFCCP wants to emphasize that the information it would ask contractors to submit in response to the Scheduling Letter and Itemized Listing is information that they are already required to maintain”

*From the OFCCP’s Note to Reviewer,
September 28, 2011*

Recommendation #3 – Promos and Terms

- ☐ **Define competitive and noncompetitive promotions and train HR and managers on the distinction**
 - competitive = application process and applicant pool for promotion
 - non-competitive = “tap on the shoulder”
- ☐ **Create new forms that require the different promotion categories to be coded differently**
- ☐ **Ensure that you have the HRIS means to track competitive promotion pools**
- ☐ **Distinguish between involuntary terminations for cause and Reductions in Force (RIFs)**
- ☐ **Maintain retrievable records regarding the “pool” for RIFs**
- ☐ **OWBPA lists should match the RIF pools**

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Recommendation #3 – Promos and Terms (cont'd)

- ☐ **Pools**
 - Promotions
 - only competitive (applied for) promotions will have specific pools
 - possible default pool for noncompetitive promotions, beginning of the year population in the job group or job title, with or without hires (?)
 - Terminations
 - RIFs often will have specific pools
 - other involuntary (for cause) termination likely will not
 - default pool could be beginning of AAP year snapshot of job group/title, with or without hires (?)

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Compensation

The Old Scheduling Letter

The old scheduling letter asked for annualized compensation data (wages, salaries, commissions and bonuses) by either salary range, rate, grade or level showing total number of employees by race and gender and total compensation by race and gender.

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The New Scheduling Letter

■ The new scheduling letter asks for

- Employee level compensation data for all employees (including but not limited to full-time, part-time, contract, per diem or day labor or temporary)
- As of February 1st (i.e., the data as it existed on the most recent February 1st date)
- Include gender and race/ethnicity
- Include hire date, job title, EEO-1 category, and job group in Excel
- Compensation includes base salary, wage rate, and hours worked
- Bonuses, incentives, commissions, merit increases, locality pay or overtime should be identified separately for each employee
- You may provide additional data on other factors such as education, past experience, duty location, performance ratings, department or function, and salary level/band/range/grade
- Documentation and policies related to compensation practices should be included in the submission, particularly those that explain the factors and reasoning used to determine compensation

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“Some commenters mistakenly believe that the definition of ‘employee’ found in the instructions for completing the EEO-1 Report applies to the regulations implementing the Executive Order. . . . However, the definition of ‘employee’ included in the EEO-1 Report Instruction Booklet is limited to that report.”

Sept. 28 Note to Reviewer at 31.

“OFCCP broadly defines ‘employee’ as a person employed by a federal contractor, subcontractor, federally assisted construction contractor or subcontractor. . . . Accordingly, in sub-regulatory guidance OFCCP states that the term ‘employee,’ as used in the AAP regulations in Part 60-2, is broad enough to include part-time, temporary and full-time employees. Therefore, OFCCP requires contractors to include part-time and temporary employees in their AAPs. . . . Item 12 does . . . Seek compensation data for ‘contract, per diem, or day laborers’ as categories of temporary employees on the contractor’s payroll. This is not an expansion but a clarification of covered employees for reporting compensation data that supports enhanced data analysis.”

Note to Reviewers, at 31-32.

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“OFCCP believes that the amount of time needed by contractors or their human resource providers/vendors to modify data tracking and data analyses tools is not excessive. OFCCP believes that for those contractors with existing systems, the modifications needed is the development or modification of a database query.”

Recommendation #4 – Retrievability

- ☐ **Do you currently track this data for contractors, per-diemers, day-laborers, and temporary employees? If not, do so now.**
- ☐ **Ensure that HRIS, payroll, performance records, executive compensation, stock awards, bonuses, incentives – all the various tracking systems can “talk to each other” so you can pull the “other” compensation data**
- ☐ **Implement the means to capture 12 months of the non-base salary data going back to February 1 of the prior year**

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Recommendation #5 – Comp Data and Policies

- ☐ **Assess what other data you maintain reliably, consistently, and how retrievable it is**
 - Education
 - Prior work history
 - Company work history
 - Company compensation history
 - Performance ratings
 - Merit Increases
 - Initial Starting Salary
- ☐ **Whose pay is set pursuant to collective bargaining?**
- ☐ **Assess what policies and compensation documentation exists**
 - Up to date? Accurate?
 - Reflective of current practices?

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Recommendation #6 – Comp Analyses

- ▣ For non-audits (routine AAPs), continue to run these simply because despite all the activity by OFCCP on comp, most compensation audits wind up focusing on specific job titles and the company's ability to explain pay variations within the job title
- ▣ Under the protection of attorney-client privilege (and if you have the budget)
 - Self-evaluate the variables in a regression analysis
- ▣ How should you submit data at the desk audit?
- ▣ What data should you submit at the desk audit?

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Collective Bargaining
Agreements

Before and After

▣ **Old letter:**

“a copy of your collective bargaining agreement(s), if applicable. Please also include any other information you have already prepared that would assist us in understanding your employee mobility system(s), e.g., promotion, etc.”

▣ **New letter:**

“a copy of your collective bargaining agreement(s), if applicable. Include any other documents you prepared, such as policy statements, employee notices or handbook, etc. that implement, explain or elaborate on the provisions of the collective bargaining agreement.”

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“OFCCP concludes that limiting the scope of the request, as suggested by some, has the effect of limiting its ability to examine the entire contract in context for EEO policy, seniority, educational benefits, concentrations, job classifications, and other personnel related activities covered by the agreement. Moreover, by obtaining all the relevant documents early in the process, OFCCP is likely to make fewer follow up document requests.”

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Recommendation #7 - CBAs

- ☐ Ensure that company labor relations officers know about your need to produce this information in OFCCP audits
- ☐ Develop a mechanism to keep track of all “policy statements, employee notices or handbooks” that “implement, explain or elaborate” on the CBA.

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Leave Policies

New Itemized Listing 8

“Copies of your employment leave policies including, but not limited to, policies relating to implementing the Family Medical Leave Act, pregnancy leave, and accommodations for religious observances and practices. Send your employee handbook or manual if these policies are a part of these documents”

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In response to some comments, which noted that the request for the entire handbook or manual was overbroad and included information not relevant to an OFCCP audit, OFCCP “revised Item 8 to provide the option of submitting the [entire] manual or handbook, or submitting only relevant pages (including the front cover of the manual or handbook, the Table of contents, and those pages with the leave policies).”

Recommendation #8 – Leave Policies

- ☐ Identify relevant leave policies
- ☐ Who “owns” the handbook and its updates? Ensure that the “owner” of the process and/or the updates on your company intranet know about your need for this information in an OFCCP audit
- ☐ If you maintain your policies on your company Intranet, how easy or hard would it be to pdf the relevant pages as part of an audit? If time consuming, make a pdf of them, now.
- ☐ Are they current?
- ☐ Are they accurate?
- ☐ Keep in mind that because AAPs go one year back (and in an audit OFCCP is entitled to 2 years back), you need to keep track of policies that were in effect at the time of the data capture and personnel actions

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Section 503 and VEVRAA

New Itemized Listing 13

- ☐ **“Copies of your Veterans’ Employment Report (VETS-100 and/or VETS-100A) for the last ~~three~~ two years”**
- ☐ **“Copies of accommodation policies and records of accommodations granted under Section 503 and Section 4212.”**

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“After considering the comments, and assessing the practicality and utility of the proposed requirements of this item, OFCCP is changing the proposed request that contractors submit their VETS-100 and/or VETS-100A forms from the last three years to requesting that they submit such forms for two years (the current year and the previous year).”

Note to Reviewer at 33-34.

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Recommendation #9 - VETS Reports

VETS forms for the last two years:

Copies / Viewing of Filings

2011 Filing Cycle

- Contractors will have the ability to view the reports that they submitted and will not be able to view those of other contractors. Copies may be printed using the VETS100 online reporting application by the end user only.
- Hard copies for contractors other than the submitting contractor can be obtained only through a Freedom of Information Act (FOIA) request. Please go to the US DOL's FOIA homepage for instructions on how to do this at: www.dol.gov/dol/foia/.

2010 Filing Cycle or Earlier

- Copies of previously submitted reports for the 2010 filing cycle or earlier are not available in the VETS100 online reporting application. They can only be obtained through a Freedom of Information Act (FOIA) request. Please go to the US DOL's FOIA homepage for instructions on how to do this at: www.dol.gov/dol/foia/.
- Submit your FOIA requests, now.

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VETS FOIA Response 2.25.12

This letter is in response to your November 10, 2011 Freedom of Information Act (FOIA) request, which was assigned to the Veterans Employment and Training Service (VETS) on November 14, 2011. Your request has been assigned tracking number ***.

VETS National Office has conducted a search of records and correspondences and is unable to process requests for copies of VETS 100/100A reports for 2010 or earlier and therefore can not provide documents compliant with your request. We are unable to provide copies of VETS 100/100A reports for 2010 or earlier due to system malfunction. The VETS 100 System is being restructured and will be operational in July 2012. For 2011 reports, you may still file your VETS 100 report. Download the forms from the VETS website and email to parker.george@dol.gov and I will send verification that your submission was received.

In accordance with VETS 100 system filing instructions, employers must keep copies of the completed annual VETS-100 Report submitted to the Department of Labor for a period of two years and the VETS100A Report for one year.

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Recommendation #10 – Track Accommodations

- ☐ Who “owns” the accommodation process, now?
- ☐ Limited to ADA accommodations, or broader?
- ☐ Note: Itemized Listing 13 asks only for accommodations granted; it does not ask for all accommodations requested
- ☐ Ensure that the accommodation process owners know that “records of accommodations granted” will be needed for a desk audit submission

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Questions & Answers



thank you



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