

Getting Started

This chapter will help you to start writing your plan. You'll answer the following questions:

- Who is a contractor?
- Does your organization have to prepare a written affirmative action plan (AAP)?
- What is meant by a "written AAP"?
- What is a separate facility waiver?
- What is an "establishment"?
- When must the AAP be developed?
- What is the "plan year"?
- What is a functional AAP?
- When should the AAP be filed?
- Can filing be avoided?
- How is an AAP coordinator selected?
- What should the coordinator's role be?
- What is an "AA policy"?
- How is an AAP disseminated?
- What is the "EEO clause"?
- What are "EEO-1 Reports"?
- What "miscellaneous items" should the contractor include in its plan?

Who Is a Contractor?

The term "contractor" or "government contractor" is used throughout this workbook in pertinent government regulations. The term "contractor" does not refer to the construction or building industry. Here "contractor" means supply and service, which means you if you presently hold or intend to apply for government business.

Note: The term "contractor" also includes the term "subcontractor," alleviating the need to make a separate reference to a subcontract each time a contract is mentioned.

Who Must Prepare a Written Affirmative Action Program (AAP)?

Is your company required to prepare a written AAP?

Remember “The 50-50 Rule.” The 50-50 Rule is this: You are required to have an AAP for women and minorities if you have 50 or more employees and supply and service contracts with the government worth \$50,000 or more.

You are also required to have a written AAP if you:

- Serve as a depository of government funds in any amount
- Serve as a financial institution that is an issuing or paying agent for U.S. savings bonds and savings notes in any amount
- Have government bills of lading that, in any 12-month period, total or can reasonably be expected to total \$50,000 or more
- Have federally assisted construction contracts exceeding \$10,000

What Is a Separate Facility Waiver?

In certain rare and compelling instances, where a contractor meets the 50-50 Rule, an AAP for minorities and females may not be required under EO 11246. This circumstance might occur where a contractor operates a facility that is separate and distinct from the activities at another facility where performance of the contract occurs and an AAP is required. In such cases, the contractor must apply in writing to the OFCCP’s Deputy Assistant Secretary (DAS) for an exemption or waiver.

Example: A government agency seeks to enter into a contract for more than \$50,000 with a contractor who employs more than 50 employees. The contractor has several hundred retail stores nationwide. Only the employees from the company’s corporate office would perform the work on the contract and the total costs of the services would not exceed \$65,000. The proposed contract would be in effect for a six-month period.

Without an exemption, the company would be required to develop and maintain a written AAP for all of its establishments, including its many retail stores. With an exemption, the company may not have to develop a written AAP for its several hundred retail stores. In deciding whether the retail stores are separate and distinct from activities related to the proposed government contract, the DAS considers the factors outlined below in light of the total number of establishments connected with the proposed government contract.

What Are the Factors Considered for a Separate Facility Waiver?

On September 13, 2002, the OFCCP issued a policy directive explaining the factors that it will consider when deciding whether to grant a separate facility exemption/waiver from the requirements of EO 11246 and VEVRAA. The DAS will base his finding that a facility for which an exemption is sought is separate and distinct from the performance of a federal contract(s) on the following factors:

- Whether any work at the facility directly or indirectly supports or contributes to the satisfaction of the work performed on a government contract;
- The extent to which the contractor derives benefits from a government contract, directly or indirectly, at the facility to be exempted;

- Whether any costs associated with operating the facility are charged to a government contract;
- Whether working at the facility for which an exemption or waiver is sought is a prerequisite for advancement in job responsibility or pay at facilities connected to a government contract and at the facility for which an exemption or waiver is sought;
- Whether employees who normally work at the facility are required to perform work related to a government contract at another facility;
- Whether the facility regularly or substantially transfers employees to or from facilities at which a government contract is performed;
- Such other factors that the DAS deems are necessary or appropriate for considering whether the facility is in all respects separate and distinct from the activities of the contractor related to the performance of a contract. Other factors could include the number of facilities connected to the contractor's government contracts and the nature of the contractor's contractual relationship with the government.

Other Factors

The DAS will not grant the exemption or waiver from AA requirements where it is shown that granting the exemption or waiver will interfere with or impede AA requirements. Other factors considered when making this determination are:

- Whether the waiver will be used as a subterfuge to circumvent the contractor's obligations under federal, state, or local equal employment opportunity laws;
- The contractor's record of compliance with federal, state, or local equal employment opportunity laws; and
- Such other factors that the DAS deems are necessary or appropriate for considering whether the granting of the exemption or waiver would interfere with or impede the effectuation of either the Executive Order or the affirmative action provisions.

What Is Meant by a Written AAP?

An AAP may be in writing or in electronic format if all the contractor's employees who are permitted or required to have access to the AAP have equal access to the electronic version of the AAP. If some of the contractor's employees lack access to the electronic version of the AAP, the contractor must also provide access to a hard (paper) copy of it to employees.

What Is an 'Establishment'?

The regulations require contractors who meet AAP requirements to develop an AAP for each of their establishments. The word establishment refers to a single physical site or location. Each employee must be included in an AAP of the establishment at which he or she works, except for: 1) employees who work at different establishments from the manager to whom they report. These employees must be included in the AAP of their manager; 2) employees who work at different establishments from where hiring decisions are made are included in the AAP of the establishment where the hiring decision is made (known as "corporate initiative").

There are three options for preparing an AAP for employees who work at an establishment where the contractor employs fewer than 50 employees:

1. These employees may be included in: 1) a separate AAP for just that establishment; 2) in the AAP which covers the location of the personnel function which supports the

establishment; or 3) in the AAP which covers the location of the official to whom they report.

2. Employees who are selected at a higher level establishment (e.g., corporate headquarters) within the organization must be included in the AAP where the selection decision is made.

The following is an example of the type of AAP organization by “establishment” that meets the current regulations:

A manufacturing company with government contracts, headquartered in Cincinnati, directed that each of its manufacturing plants and technical centers with more than 50 employees develop its own AAP. The three divisional offices, located in San Francisco, Houston, and Philadelphia, each having more than 50 employees, developed their own affirmative action programs and included regional and district sales offices in the plans that reported through that divisional structure. Then, at the headquarters in Cincinnati, the corporate plan included marketing support, credit and collection offices, and certain other divisional and corporate support functions. While each function in Cincinnati had fewer than 50 persons, the total employee population at the site was 195.

This approach would meet the current regulations and not require approval by the Deputy Assistant Secretary or his or her designee. However, if that same manufacturing company wanted to develop an AAP that included the sales offices in each of the divisional offices, it would have had to seek approval for that plan.

When Does the Contractor Develop an AAP?

The contractor must develop an AAP within 120 days from the commencement of the contract (41 CFR 60-2(c)). The government also expects that a new plan will have been developed and in effect on the date that the old AAP expires because affirmative action is supposed to be an ongoing management tool for self-analysis and not just an annual exercise.

Selecting Your Affirmative Action ‘Plan Year’

At the outset, before you even start to accumulate your materials, the first question you will want to ask yourself and your management team is: What is our affirmative action plan year? For most contractors, it will be the calendar year January 1 to December 31, as many statistics revolve around the calendar year. The financial year-end of December 31 is for most companies also a convenient cutoff point for affirmative action plan purposes. The OFCCP is silent on the matter of selecting the starting and ending dates for your plan. You may choose your own dates as long as you are certain that you do not have any discriminatory reasons for selecting those dates.

For example, one company chose March 1 to February 28 as its plan year. This company felt that the last weeks of December were a period of time when operations were cut back, a good number of employees were on layoff, and, therefore, the latter part of December was not truly representative of the workforce in the organization. However, if they had used a calendar year, this “end-of-year” number would have shown these highly unrepresentative figures. As a result, they selected a different “plan year.” You may select a different time frame as long as it is representative of your workforce and of your business activity.

What Is a Functional AAP?

Where appropriate, a contractor has the option of preparing a functional AAP instead of an AAP based on its physical location. The contractor may also have a functional AAP and one based on establishment. In order to have a functional AAP, the contractor must first reach agreement with the OFCCP and have the written approval of the Deputy Assistant Secretary (DAS) for Contract Compliance. The agreement for the functional AAP is good for five years. After five years, the contractor must apply for renewal of the agreement.

A functional AAP contains a workforce analysis based on distinct business units within an organization regardless of the geographic location of the business units (41 CFR 60-22.1(d)(4)). A functional or business unit is a component of a company that operates autonomously from the rest of the contractor's business. For instance, a functional or business unit may have its own managing official and be listed separately on a company's organizational chart and operate under separate cost centers. A functional or business unit may also have personnel transactional activities (e.g., applicant flow, hires, promotions, or terminations) that are distinguishable from other parts of the company.

Time Frame for Approval of Functional AAPs

If after 120 calendar days from OFCCP's confirmed receipt of the contractor's request for a functional AAP, OFCCP has neither approved nor disapproved the contractor's request, the request will be deemed approved by the DAS. The contractor may implement the functional AAP 120 calendar days after the date OFCCP received the written request.

Mandatory Components of a Functional AAP

A functional AAP must include the components that are prescribed in the regulations in 41 CFR Part 60-2 and as enumerated in the following items a-i. All AAP components, however, will be based on functional or business units rather than an establishment. The functional AAP must include:

- a. An organizational profile or workforce analysis as required under 41 CFR 60-2.11.
- b. A job group analysis and the placement of incumbents in job groups, as required under 41 CFR 60-2.12 and 60-2.13, respectively.
- c. The availability determinations required under 41 CFR 60-2.14, along with a description of the methodology used to determine availability for the job groups covered by the proposed functional AAP(s).
- d. A comparison of incumbency to availability in an acceptable format, as required under 41 CFR 60-2.15.
- e. Placement goals, if applicable, and a description of the contractor's methodology for goal setting as required under 41 CFR 60-2.16.
- f. Designation of the responsibility for implementing the functional AAP(s), as required under 41 CFR 60-2.17(a).
- g. A description of the in-depth analyses of the employment process that were conducted to determine whether impediments to equal employment opportunity exist, and a list of the problem areas identified, as required under 41 CFR 60-2.17(b).

- h. A description of the action-oriented programs that will be implemented to correct any problem areas identified and to establish goals and objectives, as required under 41 CFR 60-2.17(c).
- i. A description of the internal audit and reporting systems that are used to measure the effectiveness of the AAP, as required under 41 CFR 60-2.17(d).

Note: To see a sample functional AA plan agreement, go to Appendix B-135–140, in this book.

Appointing an AAP Coordinator (AAPC)

One of the first things the contractor must do is designate an official to be responsible and accountable for your organization's affirmative action program (41 CFR 60-2.17(a)). While we have indicated that you need to designate a single official to be responsible for and accountable for the affirmative action program, that person cannot do the job alone.

The coordinator is the person who draws together the concerns, problems, interests, and diverse groups in any organization and gets the job done. The coordinator must also have the authority, resources, support, and access to top management to ensure the effective implementation of the affirmative action program and have access to management at least three or four times a year to ensure that the program is carried out.

With executive-management support, every individual who has decision-making authority in the company then takes on some of the responsibility for making an affirmative action program work.

Responsibilities of the AAPC

The responsibilities of the AAPC are many. In order to assist your AAPC, we have included several form letters and prewritten policies at the end of this chapter. These forms will facilitate the coordinator's job responsibilities. Here are some of the AAPC's responsibilities:

- **Providing information.** The basic step to affirmative action is informing management and supervisors of the basic requirements of employment law and federal and state regulations. The AAPC must make sure that your organization is not breaking the law, and that your policies and procedures meet current government regulations.
- **Preparing a survey.** Every other year the AAPC will be required to prepare an Equal Opportunity Survey providing the OFCCP with data concerning personnel practices, pay practices, and affirmative action performance covering applicants, hires, promotions, terminations, compensation, and tenure by race and gender.
- **Providing information to OFCCP upon request.** The AAPC must be able to identify the gender, race, and ethnicity of each employee and, where possible, each applicant, and supply this information to the OFCCP upon request.
- **Developing an affirmative action policy.** The AAPC helps draft the organization's policy statement on affirmative action, delegates the responsibilities of managers and supervisors for affirmative action, and decides how to communicate these policies within the organization and externally to the community.
- **Preparing the affirmative action plan.** If the organization is a government contractor and has only one location with more than 50 employees, the AAPC prepares one set of plans. If a multilocation company is involved, the task may involve preparing a

“model” or prototype set of plans as guidance to the branches on how the company wants the job done.

- **Spotting problems.** The AAPC’s responsibility involves identifying problem areas within the company and working with line and staff managers to correct them:
 - Evaluating the workforce by organizational and job groups to determine whether there are areas of underutilization or uneven distribution of minorities and females.
 - Monitoring personnel activity to determine whether there are selection disparities for gender, race, or ethnicity.
 - Monitoring compensation systems to determine whether there are gender-, race-, or ethnicity-based disparities.
 - Selecting and hiring applicants; promoting, transferring, and terminating individuals within the organization; and determining training opportunities, benefits coverage, compensation levels, and other treatment on the job.
 - Evaluating all other areas that might impact the success of the AAP.
- **Auditing.** Developing an audit or control procedure to measure the effectiveness of the affirmative action efforts is also a part of the AAPC’s function.
- **Conducting training.** This involves preparing and leading awareness training programs to correct problem areas or increase supervisory awareness.
- **Communicating with the community.** The AAPC serves as the focus person in the organization on contacts to women’s, minority, disabled, and veterans’ organizations within the community.
- **Self-evaluating.** The AAPC must monitor compliance with equal employment opportunity, recruitment, selection, advancement, and equal pay.
- **Identifying barriers.** The AAPC must identify barriers to equal employment, promotion, transfer, and compensation.
- **Having action-oriented programs.** The AAPC must identify problem areas and develop programs to correct problem areas in order to attain outlined goals and objectives. Preparation of program summary to be updated and submitted to the OFCCP each year on the anniversary date of the AAP (41 CFR 60-2.31).
- **Reviewing forms.** The AAPC must review all technical forms of compliance for conformance with federal regulations.
- **Ensuring equal opportunity and participation.** The AAPC must ensure that minority and female employees are afforded full opportunity and are encouraged to participate in all company-sponsored educational, training, social, and recreational functions. In addition, the AAPC ensures that all facilities (locker rooms, rest rooms, dining areas, etc.) are comparable for both sexes.
- **Maintaining records.** The AAPC must maintain all personnel or employment records for a minimum of two years from the making of the record or the personnel action involved, whichever occurs later. **Note:** If the contractor has fewer than 150 employees or a government contract worth less than \$150,000, the minimum record retention requirement is one year from the date of the making of the record or the

personnel action involved, whichever occurs later (41 CFR 60-1.1.2). A contractor must preserve its AAP and documentation of good-faith effort for the immediately preceding AAP year, unless it was not then covered by the AAP requirement (41 CFR 60-1.12(b)).

Other Requirements

EEO Policy

This policy statement is the starting point in your management commitment to doing something constructive about affirmative action. If you don't have your EEO policy in writing, you certainly should—otherwise you'll be subject to an OFCCP "technical" citation in the event of an on-site visit.

You'll need such a statement signed by the chief executive officer at your location or within your company.

The policy statement must include the following:

- The officer's commitment to equal opportunity.
- All personnel decisions regarding recruitment, hiring, training, transfer, compensation, promotion, layoffs, tuition assistance, and social and recreation programs will be made without regard to race, color, religion, sex, or national origin, except where a bona fide occupational qualification exists.
- Employment decisions will be made to further the principles of equal opportunity.
- Promotion decisions will be made to further the principles of equal opportunity.

Other items that must be included are:

- Assignment of overall responsibility for commitment to equal opportunity and AAP.
- A reporting and monitoring procedure (41 CFR 60-2.20).

Dissemination of Your EEO Policy

Internal and external dissemination of your EEO policy is strongly urged by OFCCP. It reminds employees that you take EEO policy very seriously. You must post a notice or policy on company bulletin boards that your company is an equal opportunity employer. Larger organizations go to the expense of having a standard form, signed by the ranking chief executive, formally printed so that there is a longer-lasting poster prominently displayed on bulletin boards throughout the facility.

The government urges contractors to do the following to disseminate the policy internally:

- Include the policy statement in your contractor's policy manual.
- Include the policy statement in a company newspaper, magazine, annual report, and other published statements.
- Conduct special meetings with executive, management, and supervisory personnel to explain the policy and individual responsibility for its implementation.
- Schedule special meetings for all other employees to explain the policy and discuss individual employee responsibility.

- Discuss the policy thoroughly in both employee orientation and management training programs.
- Meet with union officials to discuss the policy and request their cooperation.
- Include nondiscrimination clauses in all union agreements and review all contractual provisions to ensure that they are nondiscriminatory. A sample clause is shown at the end of this chapter.
- Publish articles covering the EEO program's progress reports and promotion of minority and female employees in company publications.
- Feature minority and women employees in company printouts and all company advertising.
- Communicate the AAP to all employees and inform them how to avail themselves of its benefits.

The contractor should do the following to disseminate the EEO policy externally:

- Inform all recruiting sources verbally and in writing of company policy and ask that they actively recruit and refer women and minorities for all positions listed.
- State expressly in employment advertisements that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin, and that the advertisement also contains the designation "equal opportunity employer" or, in the shortened version for classified ads, "EEO employer m/f, vets/disabled." (For detailed information, see discussion of recruiting of candidates elsewhere in this workbook.)
- Incorporate the equal opportunity clause in all purchase orders, leases, and contracts covered by the OFCCP.
- Notify, preferably in writing, minority and women's organization, community agencies, community leaders, secondary schools, and colleges of the company policy.
- Communicate to prospective employees the contractor's AAP and how to avail themselves of its benefits.
- Feature minorities and women in all company advertising.
- Send written notification of company policy to all subcontractors, vendors, and suppliers requesting that they comply.
- Note that a copy of an Equal Opportunity poster is shown at the end of this chapter. Copies may be obtained from the nearest office of the U.S. Department of Labor.

Equal Opportunity Audit

This checklist will help you to identify areas in which your organization is not meeting its AA requirements, such as having a comprehensive policy against discrimination.

Equal Opportunity Audit

Does your company have a stated policy of compliance with all applicable discrimination laws? Yes No

Does the policy apply to:	Yes	No		Yes	No
Recruitment?	<input type="checkbox"/>	<input type="checkbox"/>	Layoffs?	<input type="checkbox"/>	<input type="checkbox"/>
Selection?	<input type="checkbox"/>	<input type="checkbox"/>	Termination?	<input type="checkbox"/>	<input type="checkbox"/>
Placement?	<input type="checkbox"/>	<input type="checkbox"/>	Recalls?	<input type="checkbox"/>	<input type="checkbox"/>
Training?	<input type="checkbox"/>	<input type="checkbox"/>	Compensation?	<input type="checkbox"/>	<input type="checkbox"/>
Promotion?	<input type="checkbox"/>	<input type="checkbox"/>	Benefits?	<input type="checkbox"/>	<input type="checkbox"/>
Demotion?	<input type="checkbox"/>	<input type="checkbox"/>			

Does your company have an explicit policy against discrimination because of:

	Yes	No		Yes	No
Race?	<input type="checkbox"/>	<input type="checkbox"/>	Mental disability?	<input type="checkbox"/>	<input type="checkbox"/>
Color?	<input type="checkbox"/>	<input type="checkbox"/>	Age?	<input type="checkbox"/>	<input type="checkbox"/>
Religion?	<input type="checkbox"/>	<input type="checkbox"/>	Workers' comp?	<input type="checkbox"/>	<input type="checkbox"/>
Sex?	<input type="checkbox"/>	<input type="checkbox"/>	Whistleblowing?	<input type="checkbox"/>	<input type="checkbox"/>
Sexual orientation?	<input type="checkbox"/>	<input type="checkbox"/>	Exercising ERISA?	<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy?	<input type="checkbox"/>	<input type="checkbox"/>	Political activities?	<input type="checkbox"/>	<input type="checkbox"/>
National origin?	<input type="checkbox"/>	<input type="checkbox"/>	Marital status?	<input type="checkbox"/>	<input type="checkbox"/>
Physical disability?	<input type="checkbox"/>	<input type="checkbox"/>			

Does your company have:

	Yes	No
A policy to investigate discrimination claims?	<input type="checkbox"/>	<input type="checkbox"/>
Written guidelines on investigative methods?	<input type="checkbox"/>	<input type="checkbox"/>
A policy to promptly resolve all legitimate claims of discrimination?	<input type="checkbox"/>	<input type="checkbox"/>
A yearly review of policy to ensure compliance with applicable laws?	<input type="checkbox"/>	<input type="checkbox"/>
A system for auditing compliance with discrimination laws?	<input type="checkbox"/>	<input type="checkbox"/>
A procedure for employees to complain about discrimination?	<input type="checkbox"/>	<input type="checkbox"/>

Does your company have all positions analyzed for needed skills, knowledge, and abilities? Yes No

Are all tests used in hiring validated? Yes No

Do you review company EEO-1 forms from year to year to detect indications of discrimination? Yes No

Do you review promotions to determine if there is any pattern of discrimination? Yes No

Are all antidiscrimination policies in writing? Yes No

Is there one person or department responsible for administering policies and responding to claims? Yes No

Note: the audit may reveal that your communication problems can be addressed a number of ways: displaying a bulletin board and posting notices on it, distributing an employee newsletter, writing an employee handbook, or having an employee Internet or intranet site.

Equal Opportunity Clause

All contractors are required to insert an equal opportunity clause in their contracts (41 CFR 60-1.4).

Exemptions: Is your company exempt from the requirements of the equal opportunity clause? The regulations provide for very limited exceptions to the equal opportunity requirements previously discussed:

- **Transactions less than \$10,000.** An employer with contracts and subcontracts that, as an aggregate value, do not exceed \$10,000, is exempt from the requirements of the equal opportunity clause. "Aggregate value" means that when all the contractor's government contracts in a 12-month period are added up, the total dollar amount does not exceed \$10,000. A contractor who reasonably expects to have an aggregate value of total contracts of \$10,000 or more in any 12-month period is not exempt. A written affirmative action plan for women and minorities is not required unless the contractor has at least 50 employees and contracts worth \$50,000 or more.
- **Contracts and subcontracts for indefinite quantities.** An employer with open-ended contracts, requirement-type contracts, federal supply schedule contracts, call-type contracts, and a purchase notice agreement with the purchaser that the contractor reasonably believes will not exceed \$10,000 in a 12-month period is exempt from the requirements of the equal opportunity clause.
- **Work outside the United States.** Contracts and subcontracts to be performed outside the United States by employees who were not recruited within the United States are exempt from the requirements of the equal opportunity clause.
- **Specific contracts and facilities.** The director of OFCCP may, at his or her discretion, exempt a contractor or a specific facility from the requirements of the equal opportunity clause in any specific contract or subcontract. Such exemptions are extremely rare and given only when "special circumstances in the national interest so require."

Any questions about possible exemptions should be directed to your local OFCCP.

Employer Information Report—EEO-1

Each contractor is required to file annually, on or before September 30, an EEO-1 Report if it has 50 or more employees and:

- A prime contractor or first-tier subcontractor with a contract, subcontract, or purchase order with the government worth \$50,000 or more; *or*
- Served as a depository of government funds in any amount; *or*
- Is a financial institution that is an issuing and paying agent for U.S. savings bonds and notes.

Even if an AAP is not required, there is a separate requirement that all nonexempt contractors with contracts exceeding \$10,000 must include an EEO clause in all covered contracts. (See the discussion of exemptions on the previous page.) In addition, an employer with 15 or more employees and a government contract or subcontract amounting to \$10,000 or more must take affirmative action to employ disabled individuals. This requirement is part of the OFCCP regulations that implement the Rehabilitation Act.

Note: This book focuses on “government contractors,” and they are the only ones required to prepare an AAP, but there are other companies that must file an EEO-1. The Joint Reporting Committee of the EEOC and OFCCP say that any employer that has 100 or more employees and is located in one of the 50 states or the District of Columbia must file an EEO-1 report; employers in Puerto Rico, the Virgin Islands, or in other American protectorates are not required to file.

For prime contractors, certification is required from subcontractors that they have: (1) filed EEO-1 Reports with the EEOC by the legal filing date, (2) that they have their own AAPs, and that (3) their facilities are desegregated. **Note:** that it is the responsibility of the prime contractor at the time the contract is awarded to inform the subcontractor of its annual reporting responsibilities and to supply the subcontractor with the EEO-1 when necessary.

EEO-1 forms must be filed annually. Employers may now file online with the EEOC. For more information go to <http://www.eeoc.gov/eeo1survey/>. Employers doing business at more than one facility must file a report covering their headquarter's office, a separate report for each facility with 50 or more employees, and a consolidated report that includes all employees in all the facilities with 50 or more employees. Also required is a list of each facility that has fewer than 50 employees.

For more information on the EEO-1, new form and contractor's obligations under the new EEO-1 categories, see Chapter IV. Directions on how to complete the EEO-1 come with the form. You can view a copy of this form in Appendix B-141.

When Should I File a Report?

If this is your first government contract, you are required to file the EEO-1 Report “within 30 days after the award” (41 CFR 60-1.7). If you or a subcontractor is bidding for an award of \$10 million or more, your organization will be subject to a compliance review before the award of the contract.

After you file your first EEO-1 Report, the U.S. Department of Labor will assign an Employer Identification Number (EIN) to your company. In subsequent years, the government will send you a “return document” on which you will complete your EEO-1 statistics and return the report to the designated government office by September 30.

Can You Avoid Filing Reports?

Section 60-1.7 (a) (4) of the regulations addresses this question directly, stating that:

Failure to file timely, complete, and accurate reports as required constitutes noncompliance with the prime contractor or subcontractor's obligations under The Equal Opportunity Clause and is grounds for the imposition of any sanctions, as authorized by the order.

OFCCP classifies failure to file required reports as “complete disregard” of the law and regulations. Failure to file the proper reports is considered “noncompliance,” and a show-cause order will be issued for such failure. We will address the subject of sanctions in greater detail in the chapter as well as how to handle a compliance review.

Miscellaneous Items

The following items are illegal and also reflect on the image and impression you make as an equal opportunity employer to your employees and to the community in which you have a facility.

- **Desegregation of all facilities.** Be sure that none of your “facilities” are segregated on the basis of race, color, religion, or national origin. (Note that segregation on the basis of sex is excepted.) This means that all facilities must be desegregated. Facilities include waiting rooms, work areas, restaurants, time clocks, rest rooms, locker rooms, washrooms, dressing rooms, parking lots, drinking fountains, transportation, recreation or entertainment areas, or housing facilities.
- **Double-check to be sure that if your company pays membership fees or other expenses for its employees in private clubs or organizations, the policy or practice is administered without regard to race, color, religion, sex, or national origin.** Be sure, too, that such organizations don’t limit membership on the basis of race, sex, etc.
- **If your company or organization provides housing or subsidizes housing arrangements for employees near the facility, be sure that the housing accommodations are provided and funded without regard to race, color, religion, sex, or national origin.**

Obtaining Census Data

A number of commercial and public resources will help you obtain census data when preparing your AAP. Following is a list of a few of those sources.

Public Resources

- **State Data Center (SDC).** A good source for census data is the State Data Center. For more information, go to www.census.gov/sdc/www or www.eeoc.gov/stats/census. The SDC typically offers special services (sometimes for a small fee) not offered by the U.S. Census Bureau, such as marketing research, on-line data, guides to local data sources, maps, and reference libraries.
- **U.S. Census Bureau.** This agency handles census data and provides referrals. Its Internet address is www.census.gov.
- **Local colleges.** Local colleges and universities also often maintain records of census data and will provide information either free of charge or for a small fee.

Required Posters

In addition to the federal equal employment opportunity poster and required state notices related to discrimination, nonexempt federal contractors must post the Uniformed Service Employment and Reemployment Rights Act (USERRA) poster. A copy of this poster is included in *Appendix B*.

Conclusion

This chapter has covered several of the most basic actions required to prepare your affirmative action plan. The next chapter will deal with the many problems encountered in affirmative action programs—using the practical vehicle of the self-audit that will help you prepare to draft an AAP. We will closely examine your recruiting practices, affirmative action training program, and treatment of applicants. An understanding and review of these elements in the personnel process—and how your organization is handling them—is essential to the preparation of a successful affirmative action plan.

On the following pages, we have included samples of an Affirmative Action Policy Statement, purchase order language, letter to recruiters, letter to unions at your facility, labor contract clause, EEO policy statement, and EEO policy.

Sample Affirmative Action Policy Statement

Date

To: Our Employees
 Applicants for Employment
 Our Suppliers
 The Community

It is the policy of Company, Inc., to provide equal employment opportunities for training, compensation, transfer, promotion, and other aspects of employment for all qualified applicants and employees without regard to sex, race, color, religion, national origin, age, disability, or veteran status.

Every effort is made to ensure that our policies regarding hiring, salary administration, promotion, and transfer are based solely on job requirements, job performance, and job-related criteria. In addition, our personnel policies and practices—including those relating to compensation, benefits, transfer, retention, termination, training, self-development opportunities, as well as social and recreational programs—are administered without discrimination on the basis of race, color, religion, sex, age, national origin, disability, veteran status, or other basis prohibited by law.

When we are hiring or promoting in those job categories in which women, minorities, disabled individuals, or qualified covered veterans are underutilized, we will take affirmative action to seek out qualified applicants in those categories in order to meet the specified goals of our affirmative action plan.

Our vice president of personnel is designated as the Equal Employment Officer of Company, Inc., and will be responsible for communicating and implementing this policy at the head office and at all branches.

[Signed]

President and
Chief Executive Officer

Sample Purchase Order Language

EQUAL EMPLOYMENT OPPORTUNITY. Seller hereby agrees to comply with Executive Order 11246, as amended, and its implementing Regulations (including the equal opportunity clause set forth in Section 202 of such Order) and Section 60-1.4 (a) of the Regulations of the Secretary of Labor, Title 41 CFR, Chapter 60, Parts 1-60, which are incorporated into this Purchase Order by reference. In addition, this Purchase Order incorporates by reference the Affirmative Action clauses of the Rehabilitation Act of 1973 at 41 CFR Section 60-741.1 and the Vietnam Era Veterans' Readjustment Act of 1974, at 41 CFR Section 60-2050.4, as amended.

Sample Letter**Notice to Recruitment and Referral Sources—
Your Commitment as an Equal Opportunity Employer****(Send annually.)**

Dear _____:

Our organization has an ongoing commitment, through our affirmative action program, to hire and develop the best people we can find, basing our judgment on their job-related qualifications. For that reason, we are asking your assistance and cooperation in actively recruiting and referring applicants for all jobs without regard to race, color, religion, sex, age, or national origin. We also welcome qualified disabled individuals and qualified covered veterans as job applicants.

Because of our commitment as an equal opportunity employer, our continued dealings with any agency or recruitment source depend on its compliance with this policy. Thus, we expect your service to us to include active recruitment of qualified minority and female applicants for all positions we list with you.

Kindly advise all counselors in your office of this policy.

Kindly acknowledge your cooperation in these matters by initialing and dating one copy of this letter and returning it to our office.

Very truly yours,

Personnel Administrator

Confirmed: _____

Date: _____

Sample Letter

Notice to Unions at Your Facility

Local Union President

Dear _____:

The _____ Company is an equal opportunity employer. Pursuant to our EEO policy, we are taking affirmative action to provide equal employment opportunity without regard to race, color, religion, sex, age, national origin, disability, or veteran status.

This written notice is provided in accordance with Presidential Executive Order 11246 (30 FR 12319, September 28, 1965), and amendments, and 41 CFR Chapter 60.

A copy of our currently posted affirmative action poster is enclosed.

Kindly confirm your receipt of a copy of this letter by signing one copy and returning it to the writer.

Very truly yours,

Director of Employee Relations

Confirmed: _____

Date: _____

Sample Labor Contract Clause on Nondiscrimination

“The parties to this labor agreement agree that there shall be no discrimination in wages, benefits, or employment status because of race, color, religion, sex, age, national origin, disability, or veteran status.”

Equal Employment Opportunity Policy Statement

For Inclusion in Contracts

Intent

The Company reaffirms its policy of equal employment opportunity for all qualified individuals without discrimination because of race, color, religion, sex, age, national origin, disability, veteran status, or other basis prohibited by law. Underscoring this policy is our strong concern for our employees' dignity and well-being and our commitment to provide a safe, productive, and professional work environment.

Scope

Every effort is made to ensure that our policies regarding hiring, salary administration, promotion, and transfer are based solely on job requirements, job performance, and job-related criteria. In addition, our personnel policies and practices—including those relating to compensation, benefits, transfer, retention, termination, training, self-development opportunities, as well as social and recreational programs—are administered without discrimination on the basis of race, color, religion, sex, age, national origin, disability, veteran status, or other basis prohibited by law.

Application and Responsibilities

The Company's continued success in affirmative action depends in large measure not only on the commitment and involvement of those directly responsible for the program's implementation but also on the dedication of all our employees. Ensuring equal employment opportunity is a fundamental and direct responsibility of all levels of management. Managers and department heads are required to comply with government regulations and also the affirmative action goals of the Company.

Equal Employment Opportunity Policy

It is and has been the policy of _____ to provide equal employment and individual opportunity to all job applicants and employees without regard to race, color, religion, sex, age, or national origin. In reaffirming this policy, the company pledges itself as follows:

1. To recruit, hire, train, and promote for all job classifications without regard to race, color, religion, sex, age, national origin, or veteran or disabled status.
2. To ensure that all promotion decisions are made in accordance with the principles of equal employment opportunity by imposing only valid requirements for promotional opportunities.
3. To ensure that all personnel actions such as those relating to compensation, benefits, transfers, layoffs, return from layoffs, facility-sponsored training, education, tuition assistance, and social and recreation programs will be administered without regard to race, color, religion, sex, age, national origin, or veteran or disabled status.
4. To advise all new employees of the equal employment opportunity policy as part of their initial processing and orientation.
5. To include articles in company publications covering equal employment opportunity programs, progress reports, promotions, etc., of minority and female employees.
6. To post on the company's main bulletin boards the equal employment opportunity policy and other required documents.
7. To provide a means for applicant and employee complaints to be filed and addressed with regard to equal employment opportunity.
8. To establish and assign accountability and responsibility for goal achievement to every manager and employee to ensure that affirmative action shares equal importance with other business goals.

_____ is the EEO Coordinator for _____.

He/She is responsible for the implementation of our Affirmative Action Plan (AAP) and will report to me on a quarterly basis so that I may monitor our progress. Portions of this Plan concerning females and minorities, as well as the Plan's sections concerning qualified covered veterans and disabled individuals, are available for inspection by applicants and employees by contacting the EEO Coordinator.

President

Date