



# **Internal Audit, Reporting, and the Written Assessment of Outreach: Effective Tools to Ensure Compliance with These Relatively New Obligations**

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# What is an affirmative action plan?

“An affirmative action program is more than a paperwork exercise. An affirmative action program includes those policies, practices, and procedures that the contractor implements to ensure that all qualified applicants and employees are receiving an equal opportunity for recruitment, selection, advancement, and every other term and privilege associated with employment. Affirmative action, ideally, is a way the contractor regularly conducts its business. OFCCP has found that when an affirmative action program is approached from this perspective, as a powerful management tool, there is a positive correlation between the presence of affirmative action and the absence of discrimination.”



# Internal Audit and Outreach

- Executive Order Regulations
  - Internal Audit: 41 CFR Section 60-2.17(d)
  - Outreach implied in action-oriented programs: 41 CFR Section 60-2.17(c)
- Veteran Regulations
  - Outreach: 41 CFR Section 60-300.44(f)
  - Internal Audit and Reporting: 60-300.44(h)
- Disability Regulations
  - Outreach: 41 CFR Section 60-741.44(f)
  - Internal Audit and Reporting: 60-741.44(h)



# Veteran and Disability Regulations Before March 2014

- Outreach expectations under the pre-March 2014 regulations
  - One-sided
    - OFCCP would ask in audits if the contractor had evidence of outreach, and all the contractor had to provide was a list of the places where it advertised or the job fairs it attended, for example
    - The proof was one-directional – it required the employer to keep tabs on its own outward communication and did not require evaluation of the results of the outreach
  - No assessment
- No mention in the EEO policy itself of anything having to do with internal auditing



# Veteran and Disability Regulations After March 2014

- Mandatory outreach
- Stronger internal auditing
- Inclusion of internal auditing in the EEO policy itself, which policy must name the top U.S. Executive as the person who supports the contractor's affirmative action program



# The New Outreach Requirement

“The contractor shall, on an annual basis, review the outreach and recruitment efforts it has taken over the previous 12 months to evaluate their effectiveness in identifying and recruiting qualified protected veterans and individuals with disabilities. The contractor shall document each evaluation, including at a minimum, the criteria it used to evaluate the effectiveness of each effort and the contractor’s conclusion as to whether each effort was effective. Among these criteria shall be the data collected pursuant to paragraph (k) of this section for the current year and the two most recent previous years. The contractor’s conclusion as to the effectiveness of its outreach efforts must be reasonable as determined by OFCCP in light of these regulations. If the contractor concludes the totality of its efforts were not effective in identifying and recruiting qualified protected veterans and individuals with disabilities, it shall identify and implement alternative efforts listed in paragraphs (f)(1) or (f)(2) of this section in order to fulfill its obligations.”



# Breaking down the outreach obligation into its sub-parts

- The obligation to self-evaluate is an annual obligation
- It presumes the contractor has kept an accurate record of each initiative it undertook over the past 12 months
- It would be a best practice to develop an internal tool to help recruiters and other individuals who assist in the outreach efforts to track what they are doing as they do it.
  - If recruiters do not track as they go, and then the recruiter leaves your organization, how do you prove you engaged in the outreach?



# What criteria do you use to assess effectiveness?

Government contractors need to develop the criteria they will use to assess effectiveness, and the data being collected on applicants and hires (the cross-reference to paragraph (k)) is only one of those criteria, but OFCCP views data as important, so:

- In order to collect the data envisioned in paragraph (k), you must invite applicants to self-identify using a form you can develop for the veteran information and OFCCP's form for disability information
- In addition to inviting applicants to self-identify, you must re-ask for the information post-offer/at the time of hire (before the person actually begins working)
- Importantly, you should be asking on the application and at the time of hire, "How did you hear about us"
  - Solicit the recruiting source
  - If the applicant self-identifies, but does not tell you which of your outreach sources he or she used to connect with you, that does not help you to assess the effectiveness of each initiative
- Big data techniques
  - Likely to become more readily available in next few years



# Hired is not the only path to “effective” outreach

- OFCCP said so in its comments back to employers in the veteran final regulations
- “[T]he proposed rule required that the contractor consider all the metrics required by §60-300.44(k) (which includes applicant and hiring data), but also clearly allows the contractor to consider any other criteria, including ‘a number of factors that are unique to a particular establishment,’ in determining the effectiveness of its outreach so long as these criteria – whatever they are – are reasonable and documented so that OFCCP compliance officers can understand what they are. The purpose of the self-assessment is simply to ensure that the contractor thinks critically about how to evaluate and improve upon its recruitment and outreach efforts in order to maximize its connections to protected veterans [and we presume, individuals with disabilities] seeking jobs.”



# Veteran assessment

- What percentage of applicants and employees are self-identifying
- Consider discussing the percentage survey completion in your assessment
- Are you inviting veterans to self-identify just as protected veterans, or are you soliciting information on all veteran categories?
- Does your industry lend itself to attracting protected veterans?



# Assessing Job Fairs

- How many employers in total participated?
- Was this your first time trying this, or have you participated in this same job fair before?
- Did the job fair organizers accept online registration, or take a count of how many people came through in total?
- Did you have to pay to have a table or a booth?
- How many people would you say stopped by the table?
- How many people did you talk to?
- Did you collect resumes? (Be careful here!! If you are actually considering candidates for job openings, OFCCP will expect you to solicit race, gender, disability and veteran status at the job fair; if it's just informational, and they are not being considered for a particular job opening, there may not be an obligation to solicit, yet).
- Do you have any sense of how many people, who you first met at the job fair, actually submitted an application or applied on line to an actual job opening?



# Assessing Diversity Websites

- Can the website track how many “clicks” your job openings are getting?
- Can the website’s owners tell you whether your jobs are getting more, less, or about the same amount of traffic as other employers who are using their website?
- Can you track any of your applicants or hires back to a first touch off any of these websites?



# Assessing Vocational Rehab Counselors/Veteran Outplacement Agencies

- How near or remote is your place of employment to actual physical buildings where state or local representatives work and do their referral jobs? (That is, how practical is it for them to come and visit your workplace?)
- Have you ever invited them to come visit your work environment?
- Have they ever accepted that invitation?
- Have they ever sent you any qualified candidates?



# Assessing College Recruiting

- Did you obtain a list of the campus clubs in advance of your visit?
- Did you identify any organizations that appear to have a greater likelihood of having a disability or veteran membership? Any military or ROTC groups?
- Did you reach out to them? By email? By phone?
- Did they acknowledge your outreach? Did they follow up?
- When you came to campus, did you try to meet representatives of their organization?
- Did you find it useful or helpful?
- What, if anything, is the university's career services office doing to engage in outreach to their own veteran and disability communities, in advance of the visit?



# Assessing Executive Search Firms/Recruiting Agencies

- First things first – the obligation to engage in the outreach lies (at all times) with you the government contractor employer. If you choose to engage a third party agent to help you with this initiative, that’s your prerogative. But if you are going to rely on them to do your outreach for you, you might want to make that crystal clear up front. “We forgot to tell them that” or “The temp agency won’t give us their records” are not excuses.
- Have you made it clear as part of your engagement with them what your outreach obligations are vis-à-vis protected veteran and disability communities and thus what you expect of them?
- Do they know that you are going to ask them for their records to help you prove that you engaged in the required outreach through them?
- Do you know what records they are keeping for you and what types of records they are not going to be willing to share with you? You do not want to go into an audit with OFCCP and find out midway through the compliance review that your temp agency is taking the position that its outreach sources are proprietary and confidential, and they can’t or won’t share that with you.
- Fallback to the “proprietary and confidential” argument: Could they put together a summary of some of the outreach they are doing to veteran and disability organizations without revealing contact names and email addresses for the proprietary network it took them years of time and money to build?

# Effective or not, that is the question

- At the end of the day, all you need to do is label something as effective or not
- Would you do it again, or do you need to find something that is effective?
- If you label the totality of your efforts as ineffective, the regulations require that you “identify and implement alternative efforts listed in paragraphs (f)(1) or (f)(2) of this section”



# Veteran (f)(2) Sources

- (A) The Local Veterans' Employment Representative in the local employment service office (i.e., the One-Stop) nearest the contractor's establishment;
- (B) The Department of Veterans Affairs Regional Office nearest the contractor's establishment;
- (C) The veterans' counselors and coordinators ("Vet-Reps") on college campuses;
- (D) The service officers of the national veterans' groups active in the area of the contractor's establishment;
- (E) Local veterans' groups and veterans' service centers near the contractor's establishment;
- (F) The Department of Defense Transition Assistance Program (TAP), or any subsequent program that, in whole or in part, might replace TAP; and
- (G) Any organization listed in the Employer Resources section of the National Resource Directory (<http://www.nationalresourcedirectory.gov/>), or any future service that replaces or complements it.



# Disability (f)(2) Sources

- (A) The State Vocational Rehabilitation Service Agency (SVRA), State mental health agency, or State developmental disability agency in the area of the contractor's establishment;
- (B) The Employment One-Stop Career Center (One-Stop) or American Job Center nearest the contractor's establishment;
- (C) The Department of Veterans Affairs Regional Office nearest the contractor's establishment ([www.va.gov](http://www.va.gov));
- (D) Entities funded by the Department of Labor that provide recruitment or training services for individuals with disabilities, such as the services currently provided through the Employer Assistance and Resource Network (EARN) [[www.askearn.org](http://www.askearn.org)];
- (E) Local Employment Network (EN) organizations (other than the contractor, if the contractor is an EN) listed in the Social Security Administration's Ticket to Work Employment Network Directory ([www.yourtickettowork.com/endir](http://www.yourtickettowork.com/endir));
- (F) Local disability groups, organizations, or Centers for Independent Living (CIL) near the contractor's establishment;
- (G) Placement or career offices of educational institutions that specialize in the placement of individuals with disabilities; and
- (H) Private recruitment sources, such as professional organizations or employment placement services that specialize in the placement of individuals with disabilities.

# Recordkeeping

- We would be remiss if we didn't mention that the OFCCP expanded the record retention obligation for these outreach efforts from two years to three years
- “The contractor shall document all activities it undertakes to comply with the obligations of this section and retain these documents for a period of three (3) years.”
- Implicit in this requirement is the expectation that the contractor's assessment account for the prior three years of outreach and recruitment efforts



# Veterans and Disabilities Internal Audit and Reporting: .44(h)

(1) The contractor shall design and implement an audit and reporting system that will:

- (i) Measure the effectiveness of the contractor's affirmative action program;
- (ii) Indicate any need for remedial action;
- (iii) Determine the degree to which the contractor's objectives have been attained;
- (iv) Determine whether known protected veterans have had the opportunity to participate in all company sponsored educational, training, recreational and social activities;
- (v) Measure the contractor's compliance with the affirmative action program's specific obligations; and
- (vi) Document the actions taken to comply with the obligations of paragraphs (i) through (v) above, and retain these documents as employment records subject to the recordkeeping requirements of §60-300.80.

(2) Where the affirmative action program is found to be deficient, the contractor shall undertake necessary action to bring the program into compliance.



# Women and Minorities Internal Audit and Reporting

- The contractor must develop and implement an auditing system that periodically measures the effectiveness of its total affirmative action program. The actions listed below are key to a successful affirmative action program:
  - (1) Monitor records of all personnel activity, including referrals, placements, transfers, promotions, terminations, and compensation, at all levels to ensure the nondiscriminatory policy is carried out;
  - (2) Require internal reporting on a scheduled basis as to the degree to which equal employment opportunity and organizational objectives are attained;
  - (3) Review report results with all levels of management; and
  - (4) Advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.
- What evidence are you creating to prove that you engaged in the internal audit?



# Summary

- Develop a tool to help recruiters track outreach
- Train recruiters on the importance of using the tool contemporaneously with the outreach activity, and how to assess the effectiveness of the initiative
- Assess the effectiveness in a manner that would satisfy the internal audit obligations
- Ensure you maintain records for at least three (3) years



# Questions?

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