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# What you need to know about an Affirmative Action Plan

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## 1. What is an Affirmative Action Plan (AAP)?

As a condition of doing business with the federal government, federal contractors meeting certain contract and employment levels must prepare, in accordance with federal regulations, an Affirmative Action Program (AAP). An AAP is a combination of statistical reports and analysis, commitments of action and descriptions of company employment policies.

Fundamentally, an Affirmative Action Program is a management tool to ensure equal employment opportunity.

A quick overview of an AAP based on the [federal regulations](#) is as follows:

- Affirmative action programs contain a diagnostic component, including a number of quantitative analyses designed to evaluate the composition of the workforce of the contractor and compare it to the composition of the relevant labor pools.
- Affirmative action programs include action-oriented programs. If women and minorities are not being employed at a rate to be expected given their availability in the relevant labor pool, the contractor's affirmative action program includes specific practical steps designed to address this underutilization.
- Effective affirmative action programs also include internal auditing and reporting systems as a means of measuring the contractor's progress toward achieving the workforce that would be expected in the absence of discrimination.

In short, an AAP includes the policies, practices, and procedures that a federal contractor implements to ensure that all qualified applicants and employees receive an equal opportunity for recruitment, selection, advancement, and every other term and privilege associated with employment.

AAPs must be developed for:

- Minorities and women ([41 CFR 60-1](#) and [60-2](#))
- Special disabled veterans, Vietnam era veterans, and other covered veterans ([41 CFR 60-250](#))

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- Individuals with disabilities ([41 CFR 60-741](#))

### 2. Who is required to prepare an AAP?

Federal government contractors and subcontractors meeting the criteria we've listed below must create an AAP; it's a condition of doing business with the government. Some organizations for internal, political or other reasons may choose to produce a voluntary AAP.

#### Criteria requiring an AAP

Government contractors must develop and maintain AAPs for all establishments (locations) with 50 or more employees (total work force), if the contractor has a contract of at least \$50,000 or more; or has government bills of lading which in any 12-month period total \$50,000 or more; or, serves as a depository of Government funds in any amount; or, is a financial institution, which is an issuing and paying agent for U.S. Savings bonds or notes in any amount. ([Per 41 CFR 60-1.40](#))

This definition of a contractor would include, for example, defense contractors and companies leasing buildings to the government, banks, hospitals/medical centers, and universities.

### 3. What are the regulations governing AAP?

Executive Order 11246 was signed into law in 1965 and forms the basis for the regulations governing the preparation of the AAP. You can access a copy of the AAP regulations at [www.dol.gov](http://www.dol.gov).

The enforcement agency, the Office of Federal Contract Compliance Programs (OFCCP), has issued a [Compliance Manual](#) for use by their staff. It interprets the regulations but is not considered, especially by those outside the agency, as the final word.

### 4. Who is charged with enforcement and how do they accomplish this?

The Office of Federal Contract Compliance Programs (OFCCP), an agency under the Employment Standards Administration at the U.S. Department of Labor, is primarily responsible for conducting compliance evaluations of contractors' AAPs.

The OFCCP has approximately 50 local offices, known as District or Area offices, under the direction of six regional offices throughout the country. Personnel in these offices, usually compliance officers, are responsible for conducting compliance evaluations. Although each government contractor must

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prepare and update their AAP annually, these are not automatically submitted to the government. Instead, the OFCCP selects contractors for a compliance evaluation (much like the Internal Revenue Service conducting audits) and sends a letter informing the contractor that they have been selected.

The letter may request a copy of the written AAP and other data. This is reviewed at the OFCCP office as part of a desk audit and is followed by an on-site review at the contractor's facility. There are also other types of evaluations which can be used by the OFCCP to review contractor compliance with the AAP regulations.

Contractors are also required on an annual basis to file [EEO-1](#) and [VETS-100](#) reports.

## Creating and Implementing a Plan

### 1. The People for the Job

AAP creation and reporting is not a simple task. The person assigned to create a plan must have adequate experience or receive training. An alternative is to outsource plan creation. While EEO and Affirmative Action planning may not be your company's core competency, it is essential to perform these tasks well if your company is, or decides to become, a government contractor. Audits can be lengthy and costly.

### 2. Deciding how to set up your AAPs

Current regulations require a separate AAP for establishments with at least 50 employees with certain exceptions.

#### **All domestic employees must be covered in an AAP:**

Functional AAPs are allowed but require OFCCP approval. OFCCP still reserves the right to conduct compliance evaluations at the establishment level for functional AAPs.

- Even those in locations with less than 50 employees
- Even those in divisions or subsidiaries without government contracts

### 3. Conducting the Incumbency vs. Availability Analysis

To determine whether the percentage of minorities or women is less than

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would reasonably be expected, you can select from among several different rules. Over the years, a number of mathematical rules (formulas) have been developed to measure the differences between incumbency and availability. These are:

- Any Difference Rule
- 80% Rule
- Standard Deviation Rule (either Two or Three)

### 4. Placement Goals ([41 CFR 60-2.16](#))

If, following your calculations and AAP analyses, the percentage of minorities or women is less than would reasonably be expected, you will need to establish goals. Your goal should be equal to the availability percentage calculated in the Availability Analysis. For example, your goal might be to fill 12.1 % of openings in a job group with minorities or women (wherever the percentage of minorities or women is less than would be reasonably expected).

When goals have been set for job groups, your HR department will need to monitor progress, during the current AAP year, made towards goals.

- Count the number of hires and promotions/transfers into the job group
- Calculate the percentage female or minority (depending on your goals)

For example, your goal is 23% minority employment. 15 hires and promotions have been made during the year, of which 5 were minorities. This equals 33.3%, and you are meeting your goal.

If your company is a federal contractor you will need to submit the following government filings by September 30th each year:

- [EEO-1 Reporting](#)
- [VETS100 Reporting](#)

### 5. Basics for Plan Implementation

Once you have created a plan and set goals, you have all the information in place you will need. Your biggest challenge will be to implement your plan and

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gain internal plan acceptance.

One of the first and easiest steps you can take in plan implementation is to invite job applicants to self-identify with regard to race, ethnicity and sex status.

This will help communicate your policies and make the data collection for your annual AAP easier. If your company has 150 or more employees and a \$150,000 federal contract or subcontract, you will need to track personnel activity (applicant flow, hires, promotions, etc.) by race and gender for a minimum of two years. If you have less than 150 employees or your contract is for less than \$150,000, the data needs to be maintained for a year.

Communication is one of the most important aspects of plan implementation. Compliance Officers will look for AAP/EEO notices and posters through out your building, and check your job ads, as well. Communicating how hiring procedures are impacted by your affirmative action plan to hiring managers will get everyone on board with company AAP objectives. This will make hitting your goals easier in the long run. Department, staff meetings, and one-on-one meetings, can help get the word out about your company's AAP obligations to recruit and hire minorities, women, people with disabilities, and covered veterans.

Beyond communications with hiring managers, you will need to convey to senior management the importance of the company's EEO AAP obligations; this should probably take the form of a focused presentation.

Finally, you must communicate your company's EEO policy to vendors and subcontractors as per government regulations. Communicating your policies to employment resources and community groups can help with recruiting and community relations.

Good ways to ensure that everyone is clear on your EEO policy include:

- Annual company-wide emails about your EEO policy
- Group seminars about EEO
- Posters stating your EEO policy

Talking to your community and having a well-prepared AAP, should you be audited, are among the best ways to communicate your policies externally, which can result in positive PR. You might also consider listing open positions with your local State Employment service, or [America's Job Bank](#).

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Besides tracking personnel activities, you should also keep a record of all relevant good faith efforts (i.e. job postings), and keep records of [EEO-1](#) and [VETS-100](#) filings. Good record keeping is the easiest way to avoid an unpleasant audit experience.

### The Audit Process

#### 1. 30 day notice letter

If you are selected for a compliance evaluation (audit), you will receive a letter from your OFFCP district office requesting you to deliver a copy of your Affirmative Action Plan within 30 days. This is reviewed at the OFCCP office as part of a desk audit, and is followed by an on-site review at your facility. There are other types of evaluations which can be used by the OFFCP to review contractor compliance with the AAP regulations.

#### 2. Types of Evaluations

##### OFCCP

- Compliance Checks
- Focused Reviews
- Desk Audits Only
- Complete Compliance Evaluations (audits)
- Corporate Management Reviews
- Other combinations of the above

##### EEOC/DFEH

- Intake Process
- Employer Information
- Investigation
- Mediation
- Right to Sue

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- Formal Charges of Discrimination

### 3. Typical Questions

There are several components to the compliance evaluation visit, including direct observation, indirect observation, and questions. Here are some of the things auditors may look for:

- Is the employment application process physically accessible?
- Are EEO AAP posters or notices posted in the lobby, interview areas, on bulletin boards? Are they visible in every building?
- Is there an application or resume in each personnel file?
- Do manager's Performance Evaluations include comments about EEO AAP efforts?
- Do employment ads include an EEO statement?
- Are vendors and subcontractors notified of EEO policy/ (you will need to produce supporting documentation)
- Pictures/ads of minorities, women, individuals with disabilities as well as men and non-minorities shown?

### Some questions you may be asked

- Is there a self-identification tear-off or attachment on your job applications?
- Is a Post Offer Self-Identification form sent to all individuals?
- How are applicants who apply for the same positions tracked?
- Have interviewers had training in EEO and interviewing?
- Are pre-employment physicals given? When?
- How long are applications and resumes kept?
- Are pre-employment physicals given? Under what conditions?

### Describe the application or resume retrieval process

- Describe the organization's application & record keeping process. Is it documented?

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- Who is responsible? How is information maintained?
- How is documentation on employees provided?
- Is there information on training courses taken by employees and can it be retrieved for the AAP?
- Describe the Company's Job Accommodation Process.
- Are the company employee groups encouraged to refer minority, women, veterans, disabled individuals?

### 4. Pitfalls

If any of the following is true for your company, your AAP may have problem areas.

- Lack of management commitment
- Failure to conduct necessary self-audits
- Absence of consistent policies and guidelines
- Ineffective employment application procedures
- Lack of harassment-prevention programs
- Lack of review for key employment actions
- Failure to listen to internal (diversity) groups

### 5. How to be prepared

- Prepare a strategy to win each audit
- Clean-up inaccurate and incomplete data records
- Prepare your Senior Management team as well as other managers for the audit
- Consider using a 'Mock Audit' to practice
- Know your auditor's time frame

## EEEE AAP Outsourcing

Most companies decide to fully outsource Affirmative Action Program reporting due to internal resource constraints: not enough people or not enough expertise. HR Allen can help you determine whether outsourcing is the best solution for

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your company during an informational interview.

If outsourcing is determined to be your solution, our team will work with you to establish technically-compliant, fully operational affirmative action plans and programs. Your assigned consultant will review required data file formats together with you and your HRIS contact. Once data integrity is verified, our developers will prepare technically-compliant AAP's. Support in implementing your Company's program is available through HR Allen.

### Typical outsourcing process

#### Discovery

- Review current AAP processes (if any)
- Identify client issues and objectives
- Detail requirements
- Identify in-house resources

#### Planning

- Recommend an AAP Program Structure
- Identify needs by area
- Offer HR Allen products and services by area (Outsourcing and Consulting)
- Timeline

#### Implementation

- EEO AAP Education
- Development of Affirmative Action Program Structure
- Development of current year reporting

Once your Affirmative Action Program is in place, you will probably want to continue with our consulting services for plan maintenance and knowledge transfer.

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### **EEO AAP Consulting**

HR Allen offers an array of EEO AAP consulting services, from plan assistance and maintenance to AAP education and regulatory updates. All of these services begin with an initial meeting, so that we can assist you in selecting the options that best suit your needs.

A large part of our initial consultation process revolves around understanding what is unique about your company and situation. In addition, we will review in-house expertise levels, database specs, internal IT support, and internal management support. Following our initial conversations, we will develop a suggested suite of solutions, which will be tailored to match your company's situation.

#### **1. First Time AAP Development**

HR Allen consultants are available to work with your internal team in developing an initial, customized affirmative action plan for your company. Beyond just AAP Outsourcing, HR Allen has the resources to guide the roll-out of a first time AAP.

#### **2. Compliance & Regulatory Audit Guidance**

HR Allen can assist in an internal audit and review of your program, and offer guidance should you be the subject of an OFCCP compliance review. When a notice of review is sent to a client, HR Allen is available to brief Human Resources personnel and managers to review the compliance process. HR Allen will ensure that a company and its managers are prepared for the compliance process.

#### **3. EEO AAP Education**

HR Allen values continuing education and believes individuals are more effective when they understand EEO AAP principles and obligations that their employer incurs when providing goods and services to the federal government, either directly or indirectly. To this end, HR Allen provides full training for managers; holds public seminars; designs and delivers in-house company workshops on Sexual Harassment Prevention, Workforce Diversity, Compliance, Interview & Selection Practices; and consultation with Company Human Resources professionals.

#### **4. Determining Pay Equity**

HR Allen has the capability to conduct Pay Analyses to determine salary equity with regard to women versus men and minorities versus non-minorities salaries, using standard statistical methodologies. In addition, HR Allen will use the Department of Labor's own methods to analyze employee pay situations. This

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analysis is confidential.

### What you get from HR Allen Consulting Services

HR Allen Consulting Services provides a complete, technically compliant affirmative action plan solution, which includes all three of the major requirement components under 41 CFR 60 - written plans, adverse impact analyses, and compensation analyses. The written plans include three separate narratives (for females & minorities, for veterans, & for disabled individuals), full statistical analyses, performance goals, and progress reports as required by the OFCCP. The cost of the affirmative action plan includes, adverse impact analyses (aka Impact Ratio Analysis) of all your personnel transactions (applicants/hires, promotions & terminations), multiple compensation analyses now required by the OFCCP, as well as all associated time, including phone calls, required to make your plans accurate, compliant, and crafted to reflect YOUR organization's efforts in the area of affirmative action and equal employment opportunity. It also includes time to walk you through the results and their implications, as well as updates to your required forms and posting requirements. Our plans have stood the test of time in terms of acceptance by OFCCP auditors & Compliance Officers.

To have HR Allen Consulting Services develop your Affirmative Action Plan contact us at [www.hrallencs.com](http://www.hrallencs.com)