

# Yocom & McKee, Inc. Winter 2011 Newsletter

A quick end of the year re-cap of Office of Contract Compliance Programs (OFCCP) events and issues:

- The Vets 100 and 100(a) deadline has been extended through Dec 31, 2011.
- Compliance Checks may be returning as an investigative tool for the OFCCP in 2012.
- The most common problems cited in Conciliation Agreements in 2010 were:
  - Failure of outreach to Vets & Disabled.
  - Internal Audit. Progress toward goals.

These results are not unexpected due to the OFCCP's emphasis on Veterans and renewed interest in the narrative portion of contractor affirmative action plans. Contractors are expected to identify specific recruitment sources and follow up with them regarding how effectively they are at placing veterans. The OFCCP is expecting contractors to spend more time personalizing the usual boilerplate language of the affirmative action plan narrative.

- Contractors are receiving a 13-20 question compensation follow-up questionnaire in about 95% of audits. The newly formed Division of Statistics and Technology (DST) within the National OFCCP office in Washington are now completing a rudimentary initial regression analysis of the data. This is significantly delaying the completion of audits. The results almost always lead to a request for a cohort analysis of employees whose pay differs from those the OFCCP assumes are similarly situated. The most common explanation offered by companies is that the jobs the OFCCP groups together are not comparable.
- The OFCCP is comparing hires vs. calculated availability, not just apps vs. hires for adverse impact. Where the ratio of minority/woman hires is significantly less than availability, the OFCCP insists the contractor review its recruitment practices and attempt to reach minorities/women in new ways.

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We recommend reviewing your applicant flow percentages of minorities and women against the percentages in the Availability Analysis. The census codes chosen as matches for your jobs and weights given to various factors should be closely examined. Where the availability figures for minorities and women appear correct, explore new recruitment sources when actual applicant percentages fall short of calculated availability.

- An updated Scheduling Letter may be released soon. The previous Scheduling Letter expired in September, and is being temporarily renewed on a monthly basis. (The Scheduling Letter is the official notice of an OFCCP Compliance Review) Changes in the new Scheduling Letter include:
  - Demanding individual employee level data, including compensation. Currently Contractors are allowed to submit summary data by job title.
  - Compensation is defined as Base Salary plus merit increases, bonuses and other supplemental compensation.
  - Employment activity data must be given by Job Group and Job Title. The current Scheduling letter requires data by Job Group or Job Title.
  - Employment activity data must be given by individual Race/Ethnicity. In the current Scheduling letter, data is submitted by minority and non-minority only.
  - Contractors must describe how they define “promotions” and then identify the actual pool of candidates considered. Currently contractors usually compare promotions against incumbents as of the beginning of the year and there is no requirement to define “promotions.”
  - Voluntary and involuntary terminations must be listed separately. Although definitions of voluntary and involuntary are not expected to be included in the Scheduling Letter!

We currently recommend that Contractors analyze their employment activity by job group and then by jobs within any job groups having disparities. Proactively complete a cohort analysis on any adverse impact issues that arise by job. The

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Complete AAP software has been updated to allow users to analyze employment activity by job group, job and requisition in anticipation of the new Scheduling Letter requirements.

For compensation, we recommend starting with a simple regression analysis by job. Where any compensation disparity is indicated, each individual in the job should be reviewed to explain salary differences.

Be prepared to present these analyses to the OFCCP early on during the audit to defend any statistical disparities.