



The Complete AAP News

Yocom & McKee, Inc.

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The Complete AAP Version 9 Released!

Complete AAP 9.0 is now available. This version incorporates the long awaited 2000 EEO Special Tabulation Census data enabling you to prepare affirmative action plans utilizing the most recent availability statistics offered by the US Census Bureau. A convenient update option automatically converts plans created in previous versions to the new 2000 census codes so you can quickly assess the impact of the 2000 census data. This option is particularly useful if you have already prepared this year's plan. Other new powerful features include:

- Built-in narrative customized with your potential problem areas,
- Data checker that detects workforce data errors that are easier to find and fix before importing,
- Enhanced audit report to ensure your plan is compliant with OFCCP regulations,
- Option making new plan setup a breeze by capturing data from last year's plan, and
- Improved installation options.

The cost of Complete AAP 9.0 is \$495 if you have an annual maintenance agreement, or \$890 if your annual maintenance agreement has expired. You can download the order form on-line at <http://www.yocom-mckee.com/orderform.html>.

Please do not hesitate to call Yocom & McKee, Inc. at 303-277-0692 or email us at info@yocom-mckee.com with any questions.

*A new generation has grown up
in 14 years. Still using
1990 Census Data in your AAP?*



The Complete AAP software includes the entire 2000 Census and everything else needed for your AAP! Step by step instruction manual, user friendly.

No time? Let our experienced staff complete your AAP! Cost effective affirmative action software and services.

Yocom & McKee, Inc. 1-800-765-1176
www.yocom-mckee.com

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Inside this issue:

| | |
|-------------------------------------|---|
| Applicant Definition Proposed | 2 |
| The Census 2000 Special EEO File | 3 |
| Changes to the EEO-1 Form Discussed | 4 |

Special points of interest:

- New version of the Complete AAP includes the entire 2000 Census!
- Proposed Applicant definition gives room for considering qualifications when tracking applicants?
- Should you be using the 2000 Census in your 2004 AAP?

Applicant Definition Proposed

On March 3, 2004 the Inter-agency Task Force comprised of the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs, the Department of Justice and the Office of Personnel Management published in the Federal register their proposal concerning the definition of "Applicant" as used in the Uniform Guidelines on Employee Selection Procedures.



"This example appears to let the employer apply a minimal qualification of two years printing experience, and only consider individuals meeting this qualification as applicants. "

The proposal purports to clarify how the Uniform Guidelines should be applied in light of internet and technology based recruiting practices. The proposal was submitted in response to a directive from the Office of Management and Budget to the EEOC in 2000 to furnish further guidance. The proposal itself does not change the Guidelines themselves, but adds five new questions and answers. The full text can be viewed or downloaded at: <http://www.yocom-mckee.com/archive.html>

The proposal clarifies that the Guidelines do apply to Employers using the Internet and other technology based recruiting. To be an applicant, three basic requirements must be met:

1. the employer has acted to fill a particular position;
2. the individual has followed the employer's standard procedures for submitting applications; and
3. the individual has indicated an interest in the particular position.

One of the examples is particularly interesting:

Example C: An employer has two large printing plants. The company's employment web page encourages individuals who visit to register to be considered as printers by submitting personal profiles online. Some basic identifying information is required, and one question asks for total years of printing experience.

The employer authorizes the hiring of three new printers at one of the plants. To identify job seekers, Human Resources turns to several resources including its internal database. Even before it identifies those who properly followed the employer's online procedures and who are actually interested in these positions at this time, the employer searches the database to identify job seekers with two years printing experience. The search identifies 120 individuals, of whom only 50 express an interest in the positions and followed all the application procedures. These 50 people are UGESP applicants.

However, the impact of the employer's screen for two years' printing experience can be analyzed using workforce and Census data. For example, the experience requirement could be assessed based on relevant labor force statistics. If a disparate impact on a protected group were shown, then the employer would have to show that two years of experience was job-related

and consistent with business necessity for its printing positions.

This example appears to let the employer apply a minimal qualification of two years printing experience, and only consider individuals meeting this qualification as applicants. There is no duty to collect race or gender status from those not meeting the two year printing experience qualification. The EEOC or OFCCP could still challenge the legitimacy of this qualification, but if compared to relevant labor force statistics no disparate impact was evident, no further investigation would ensue. If disparate impact was found, the employer would need to show that the qualification was supported by business necessity.

What about the resumes and applications of the individuals not meeting the two years' printing experience? The Questions and Answers is silent concerning any duty to retain these records. Those persons not having two years' printing experience were not considered applicants. As non-applicants there should be no duty to retain those records.

UPDATE:

In the March 29, 2004 Federal Register, the OFCCP published further guidance about how employers must handle Internet applicants for record keeping purposes. This proposal cites four criteria to be considered an "Internet Applicant:"

(Continued on page 4)

The Census 2000 Special EEO File

On December 29, 2003 the Census 2000 Special EEO File was released to the public. It contains race, ethnic and gender data for 472 occupations. This file is similar to those from the 1970, 1980 and 1990 Census.

The Office of Federal Contract Compliance Programs has issued a **"Notice on OFCCP's Use of Census 2000 Special EEO File For Determining Reasonableness of Availability Determinations"** on their web site at: <http://www.dol.gov/esa/regs/compliance/ofccp/censuseo.htm>.

Quoting from the site:

OFCCP regulations require that "[t]he contractor must use the most current and discrete statistical information available to derive availability figures." 41 CFR 60-2.14 (d). "Examples of such information include census data, data from local job service offices, and data from colleges or other training institutions."

Contractors frequently use U. S. Census Bureau data to determine availability and OFCCP relies on Census data to assess whether a contractor's availability determination is reasonable.

Contractors who use the Special EEO File to determine availability may begin using data from the Census 2000 Special EEO File immediately. However, OFCCP recognizes

that some contractors have already prepared their AAPs for 2004 based on earlier census data, which was the most current data available at the time they developed their AAPs. OFCCP will provide contractors using Special EEO File census data time to update their AAPs. OFCCP will expect all contractors who use census data to determine availability estimates to use data from the Census 2000 Special EEO file to complete their AAPs for 2005. OFCCP will begin to use data from the Census 2000 Special EEO File to assess the reasonableness of the contractor's availability determinations beginning with AAP years that commence on or after January 1, 2005.

The regulations state "contractor(s) must use the most current and discrete statistical information available to derive availability figures." 41 CFR 60-2.14 (d). The OFCCP recognizes that some contractors have already prepared their 2004 AAP using 1990 Census or other statistical sources, and will give them time to "update their AAPs." OFCCP expects all contractors to use data from the Census 2000 Special EEO File for all plans in 2005.

Some "experts" are interpreting this language to mean that there is no obligation to use the 2000 Census data until January 1, 2005. Others are saying that the regulations themselves require "the contractor must use the most current and discrete statistical

information available to derive availability figures." The Census website and now The Complete AAP Version 9 has the 2000 Census data "available." Still others are interpreting the OFCCP's guideline to require "updating" the 2004 AAP with Census 2000 data if you previously constructed it using 1990 Census data.

At this time it seems prudent for contractors who have not yet completed their 2004 AAP to utilize the 2000 Census to construct the plan. It is clearly now "available" for use in affirmative action planning. Those who completed their 2004 plan earlier in the year using the 1990 Census could choose to "update" that plan with 2000 Census data, but it is unclear whether this is actually required. Certainly all affirmative action plans starting January 1, 2005 may no longer utilize the 1990 Census data.



The regulations state "contractor(s) must use the most current and discrete statistical information available to derive availability figures." 41 CFR 60-2.14 (d).

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(Continued from page 2)

1. The individual must have submitted an expression of interest in employment through the Internet or related technologies,
2. The employer must have considered the job seeker for employment in a particular position,
3. The job seeker's expression of interest must have indicated the individual possesses the advertised, basic qualifications for the position,
4. And the job seeker did not subsequently indicate no longer having an interest in employment in the position.

The "advertised basic qualifications" must not involve a comparison of one person's qualifications with another's, must be job related and objective.

Contractors would be required to retain all records of submissions of interest through the Internet or other

electronic means so the OFCCP can evaluate whether contractors have complied with the definition of "Internet applicant." Thus, although no gender, race or ethnicity data need be requested from an Internet "job seeker," records of their expression of interest must be retained.

The OFCCP acknowledges this proposed rule creates different record keeping standards for Internet vs traditional applicants and is soliciting comments on this issue.

Employers interested in commenting on the March 3 questions and answers, should submit them to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, N.W., Washington, DC 20507 or faxed to (202) 663-4114. Faxed comments must be limited to six pages.

Comments on the March 29 proposed rule should be emailed to ofccp-public@dol.gov.

Changes to the EEO-1 Form Discussed

On June 11, 2003 the Equal Employment Opportunity Commission published a proposed revision of the Employer Information Report. In our Fall 2003 newsletter, we highlighted the proposed changes to racial and ethnic categories.

Hearings were held in October 2003 where concerns about splitting the "Officials and Managers" category into three subgroups were discussed. The subgroups would include:

1. Executive/Senior Level Officials and Managers,
2. Mid Level Officials and

Managers, and

3. Lower Level Officials and Managers.

It is unclear how these three categories would be distinguished. One proposal would group certain jobs into each category, but jobs within different size and type of organization might be placed in different categories. Another proposal might report jobs by compensation.

It is highly unlikely any proposed changes will make it into the 2004 EEO-1, but stay tuned for further developments!

