

# The Complete AAP News

## Functional AAP Procedures Issued

Procedures for requesting approval for Functional Affirmative Action Programs (FAAP) were approved on March 21, 2002. A Functional AAP is based on functional or business units within a corporate structure, rather than on an establishment's physical location.

Any multi-establishment supply and service contractor may now request an agreement allowing the development of FAAP.

New regulations, issued in November of 2000, first mentioned FAAPs. 41 CFR 60-2.1(d)(4) states:

"If a contractor wishes to establish an affirmative action program other than by establishment, the contractor may reach agreement with the Office of Federal Contract Compliance Programs (OFCCP) on the development and use of affirmative action programs based on functional or business units. The Deputy Assistant Secretary, or his or her designee, must approve such agreements. Agreements allowing the use of functional or business unit affirmative action programs cannot be construed

to limit or restrict how the OFCCP structures its compliance evaluations."

Although new regulations opened the door for FAAPs, no procedure was available prior to March 21, 2002. The Directive, outlined herein, provides exact procedures for requesting approval for an FAAP. For the actual text of the Directive, see the [OFCCP's web site](#).

Would a Functional Unit AAP benefit your organization? At first glance, this option may appear attractive. If you are completing AAPs for many separate locations, a dozen

separate plans could potentially be condensed into a *half* dozen Functional Unit AAPs. Before applying for a Functional AAP agreement with the OFCCP, you should consider the whole picture. There are many details of this new program that are troublesome, may be more work, and may expose your organization to added liability.



*Should you jump through the hoops?*

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## OFCCP News and Developments

2002 looks to be a year of continued change at the OFCCP. In addition to the recently released guidelines for Functional AAPs, the OFCCP is expected to address several additional areas:

- Racial/Ethnic Categories: In May of 2001, the OFCCP issued a statement

that extended the EO Survey response and included an important note:

"you do not have to start collecting the revised race and ethnic data now. We will provide you with guidance when that requirement goes into effect."

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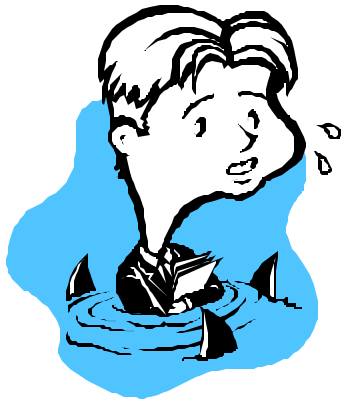
**April 2002**

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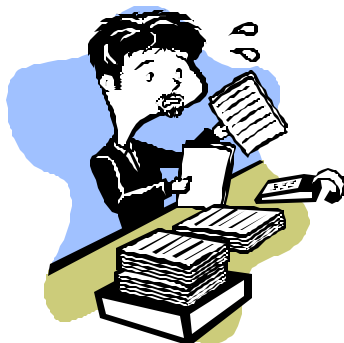
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### Special points of interest:

- Functional AAP Guidelines issued
- 2000 Census scheduled to be released late 2002 or early 2003
- EEOC & OFCCP still working on Applicant definition
- No requirement yet to use new racial/ethnic categories



*An FAAP “may not contain provisions limiting access or the manner and means by which compliance evaluations will be initiated or conducted.”*



*Before requesting an FAAP, be sure that you have meticulously planned how you intend to organize the FAAP and have documented adequate justification for your decisions.*

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In order to process your application for FAAP, it must be submitted to the Deputy Assistant Secretary for Federal Contract Compliance (DAS) at least 120 days before the expiration of your current corporate headquarters' AAP. To determine whether an FAAP is appropriate for your organization, the OFCCP will consider the following: how autonomously a functional or business unit operates; if it has its own managing official; if it is listed separately on organizational charts; and if it operates under separate cost centers. To facilitate this determination the OFCCP can require a meeting to discuss:

1. location of the facilities (or establishments) where the employees perform their duties;
2. how the company is organized within each functional or business unit (e.g., a discussion of the various divisions or departments within the corporate structure);
3. the reporting hierarchy within each such functional or business unit;
4. the total number of employees within the contractor's workforce;
5. the total number of employees within each functional or business unit and the identification of the managing official of each functional or business unit;
6. the total number of employees not covered by functional AAP(s) that are covered in establishment-based AAP(s);
7. a description of the personnel processes (including recruitment, hiring and promotion) as they apply to each unit; and
8. any other information the contractor believes would further assist OFCCP in understanding its corporate structure, procedures and need for a functional AAP(s).
9. discussions regarding job group construction and appropriate methodology for determining availability will also take place. *D254 – 9(f)(i – vii)*

Before requesting an FAAP, be sure that you

have meticulously planned how you intend to organize it and have documented adequate justification for your decisions. Those involved in discussion should include management personnel involved in each functional or business unit, individuals responsible for personnel processes for each unit, and individuals who have affirmative action planning experience.

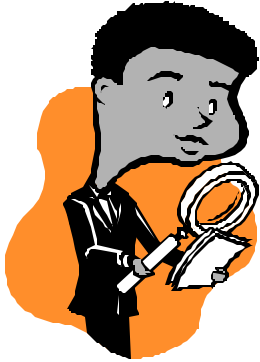
Permission to complete an FAAP expires five years after the date of approval; it can be terminated at any time with 90 days written notice; and you have a duty to immediately notify the DAS in writing of any significant changes to your organizational structure that alters the functions upon which the original FAAP was based. *D254 – 6(d)* Reorganizations, acquisitions, or a sale of portions of your organization could trigger a duty to notify DAS and place your FAAP in jeopardy.

Furthermore, an FAAP “may not contain provisions limiting access or the manner and means by which compliance evaluations will be initiated or conducted. Such issues are not negotiable.” *D254 – 6(g)* You might be well-advised to wait and see how this key statement will be interpreted and enforced.

The OFCCP is not tipping its hand on how it intends to audit organizations using FAAPs. A Compliance Review of your FAAP could be completed at your corporate headquarters and a month later a review could be initiated at one of your other locations. It is not clear whether you could successfully argue against the new review based on the FAAP that was reviewed at headquarters. You could end up with a review of your FAAP with findings that are inconsistent with the corporate FAAP review.

It is equally uncertain whether Compliance Officers are legally required to accept an FAAP when auditing an establishment. It appears they could demand a plan covering only the employees at that location. In this case, your effort to include the employees at this establishment into an FAAP would be for naught and you would have to complete a separate plan. Hopefully, this illogical, but possible scenario will not become an issue at audits, but at this point there is no track re-

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*Even if a Compliance Officer accepts an FAAP when auditing a separate establishment, is that in your best interest?*

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Even if a Compliance Officer accepts an FAAP when auditing a separate establishment, is that in your best interest? For example, if your establishment has 56 employees and is included in an FAAP that covers 5,000 employees who work at establishments across the country, the Compliance Officer will review 100 times more employees for potential salary disparities and adverse employment treatment than if you had completed an establishment AAP. You will have tremendously increased potential liability by offering a huge amount of information about your organization for review!

Compensation issues are now part of any compliance evaluation. An FAAP will expose your organization to an increased likelihood that a Compliance Officer will find alleged wages disparities. The OFCCP has taken the position that jobs in the same job group or salary grade are "equal" for purposes of wage discrimination. Although this position is virtually unsupported by courts, the OFCCP has been very successful coercing organizations into settling rather than litigating these issues. FAAPs give the OFCCP opportunities to allege corporate-wide compensation issues that affect many times the employees that individual establishment AAPs do.

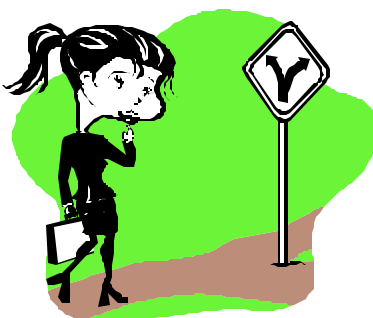
Other issues involve the actual mechanics of producing an FAAP that covers employees at very different geographic locations:

- Can you roll all your Engineering Professionals into one Job Group or will you need numerous Job Groups that cover each distinct geographic area? Rolling employees together may, in a Compliance Officer's opinion, "mask" underutilization at one location because another location has an abundance of women or minorities. Remember, nothing in the FAAP can limit the manner and means by which compliance evaluations will be initiated or conducted. You may find yourself rearranging Job Groups with hundreds of employees, which would affect scores of locations.
- The required analysis of employment

activity will become more complicated. If there are positions for which you recruit applicants centrally for all your locations, you can probably complete one Adverse Impact Analysis of applicant flow that covers those jobs. Even in this situation, if each location has final authority on hires, one location that hires many minorities may mask another that hires no minorities. A Compliance Officer may well require an Adverse Impact Analysis be done for each job group at each location. Almost certainly, separate Adverse Impact Analysis reports would need to be completed for promotions and terminations where each location makes their own decisions.

- The FAAP will by necessity list an address, probably the corporate headquarters. Every employee not working at headquarters will need an annotation that lists where they are physically located. For many organizations, the majority of the employees in the FAAP will require annotating.
- What happens if, at a particular location, some of the employees are included in an FAAP, but others are not? Regulations state that "Employees who work at an establishment where the contractor employs fewer than 50 employees, may be included under any of the following three options: In an affirmative action program which covers just that establishment; in the affirmative action program which covers the location of the personnel function which supports the establishment; or, in the affirmative action program which covers the location of the official to whom they report." *CFR 60-2.1(d)(2)* What would you do with a location that has 120 employees, and in which 80 employees are included in an FAAP, but the remaining 40 do not fit into the functional business unit. Must you complete a separate AAP for the 40 employees or can you roll them up into another AAP?

These are some of the questions to consider organizing an FAAP for your organization.



*Functional Business Unit Plan or Single Establishment Plan?*



## On-Line Ordering!

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[VISIT US AT WWW.  
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Take advantage of our new on-line order processing the next time you need to renew your annual maintenance, order additional census areas, etc. Our secure server protects the privacy of your order and offers you the convenience of placing your order any time using your credit card.

## Training Schedule

We have two day workshops scheduled that provide hands on training for The Complete AAP software. Bring your own data and we will help you import, format and finalize your AAP. For training dates and times see our web site [Training page](#).



*How will the OFCCP decide to use new racial/ethnic categories?*

### *(Census. Continued from page 1)*

By January 2003, every Federal Agency must decide which racial and ethnic categories they will be using and how. The OFCCP has not yet issued guidelines thus collecting revised race and ethnic data now might end up being a complete waste of time. We do not know whether the OFCCP will require organizations to track multiple racial and ethnic categories for individuals. The actual ethnic categories to be tracked have not been formally finalized by the OFCCP. It is possible that categories may be added or changed.

To review this document on the OFCCP web site go to the [OFCCP notice](#).

- EEO-1 Form: If race/ethnic guidelines are issued this fall, the annual EEO-1 standard form may look very different. The form could end up being much more complicated by having more occupational classifications, requiring separate race and ethnicity and by requiring that you report individuals who belong to more than one ethnic/racial category.
- Applicant Tracking: The EEOC and OFCCP have been given the responsibility of developing guidelines on how to define "applicants" and how to apply

that definition in today's internet recruiting environment. Last year, it was stated that the definition would be completed before the end of 2001. It is anticipated that a definition will be announced later this year.

- 2000 Census: The 2000 Census Data used for affirmative action planning purposes is scheduled to be released by the Census Bureau sometime late 2002 or early 2003. We are committed to processing this data and making it available to our clients as quickly as possible. Depending upon the ethnic/racial categories used by the OFCCP and whether multiple categories are permitted, there could be significant changes in our Complete AAP software.
- EO Survey: The EO Survey is currently under review. If the Survey is continued in some format, organizations can anticipate receiving it later this year.

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