



## ANSWERS TO THE MOST COMMONLY ASKED AFFIRMATIVE ACTION QUESTIONS



BERKSHIRE ASSOCIATES INC.  
Your Partner in Human Resources and Affirmative Action

**QUESTION:** Who is required to have an Affirmative Action Plan (AAP)?

**ANSWER:**

1. Each non-construction contractor and subcontractor must develop and maintain a written affirmative action plan if it has 50 or more employees; AND
2. Has a contract or subcontract (not grants) of \$50,000 or more; OR
3. Has government bills of lading which in any 12-month period are expected to total \$50,000 or more; OR
4. Is a depository of government funds; OR
5. Is a financial institution that issues, and is a paying agent for, U.S. savings bonds and savings notes.

\*If government contracts are more than \$50,000 but less than \$100,000, only the AAP for Minorities & Women must be written.

**QUESTION:** How long do I have to create an AAP?

**ANSWER:**

120 days from the date you receive the government contract.

**QUESTION:** What makes me a subcontractor under the regulations?

**ANSWER:**

If your product or service is necessary (whole or in part) to the primary contractor getting their job done.

**QUESTION:** What government agency monitors compliance with AAP requirements?

**ANSWER:**

An agency of the Department of Labor, the Office of Federal Contract Compliance Programs (OFCCP), monitors contractor compliance with these regulations. The first step of an audit is to send in your complete AAP within 30 days of receipt of notification of an audit.

**QUESTION:** Do I need to notify suppliers of goods and services that they may be subject to AA regulations by doing business with my company?

**ANSWER:**

Currently the OFCCP has accepted a statement like the following printed on the contractor's Purchase Order form:

Affirmative Action Notice: vendors and subcontractors are notified that they may be subject to the provisions of 29CFR Part 470, 41CFR Section 60-1.4(c), 41CFR Section 60-250.4 and Section 60-741.5 with respect to affirmative action program and plan requirements.



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**QUESTION:** How do I pick a plan date and what date ranges do I need to keep in mind when pulling data to submit to Berkshire for an AAP?

**ANSWER:** You may choose any of the 365 days in the year as your plan date. We recommend choosing a time of year when your workload is less demanding. You will need to collect personnel data such as new hires, promotions, transfers, and terminations for the year prior to your plan date. For example, if your plan date is January 1, 2007, you will need to collect personnel data from January 1, 2006 to December 31, 2006. You will also need to submit a Roster containing all ACTIVE employees as of December 31, 2006. If you want to consolidate reporting burdens by combining AAP and EEO-1/VETS-100 reports, your plan date should be between July 1 and August 31.

**QUESTION:** What is an Update Plan?

**ANSWER:** An Update Plan is used to monitor the progress of your AAP from the beginning of the annual plan date. If you are audited six months into your current year's plan, the OFCCP will expect you to have updated plan data and will request that it be sent along with your AAP.

**QUESTION:** What data do I need to submit to Berkshire for an Update Plan?

**ANSWER:** All we need is an updated roster containing all active employees and six months of personnel data including new hires, promotions, transfers, and terminations. The process is also easier since all you need to do is assist us with the data verification process. We'll take care of the rest.

**QUESTION:** What are some common data issues you see?

**ANSWER:** We have had the advantage of completing numerous plans. Here are the most common issues we find:

- Missing dates
  - Dates are good to have so that you can make sure that you don't have actions that are outside of the personnel action date. Remember that you will need to track dates of hires, promotions, transfers, and terminations.
- Applicant table hire does not match new hires data
  - The number of people in the applicant table marked as hired should match the number of new hires. An auditor may question the validity of the data if these do not match.
- No differentiation between internal applicants from external applicants
  - There should be a way to tell internal applicants from external ones. You can use different applicant disposition codes for "Hired – Internal" and "Hired – External."
- Updates to rosters are needed
  - Make sure that your roster is updated with new job and department codes that result from transfers, demotions, or promotions.



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**QUESTION:** **What happens if I am selected for an audit?**

**ANSWER:** First, give us a call and we will walk you through the process. Initially, a compliance review is conducted and you will be asked to send your AAP, along with supporting documentation, to the OFCCP. Many audits are closed at this stage and the compliance officer never comes on-site. If this is the case, the contractor receives a compliance evaluation closure letter for minor or no violations. If issues exist, the plan is referred to a team of compliance officers to conduct an onsite visit and investigation.

**QUESTION:** **What are the results of an on-site Audit?**

**ANSWER:** You may be asked to sign a conciliation agreement if the compliance officer finds major deficiencies in your employment practices. The OFCCP will send a predetermination notice and then a notice of violations to begin negotiations. This typically includes some type of reporting requirement in which your organization will be monitored by the OFCCP. The OFCCP also has the authority to debar a contractor from receiving federal contracts for a defined period of time.

**QUESTION:** **What would raise a red flag to a Compliance Officer during an audit?**

**ANSWER:** In our experience, we have seen the following as potential causes for an auditor to have additional questions:

- Significant adverse impact
- Large shortfall in adverse impact
- Lack of good faith efforts
- Failure to keep records, including applicant data
- Failure to follow company policies and technical issues with the AAP
- Compensation data, which on the surface may indicate a potential pattern or practice of discrimination

**QUESTION:** **How should I review my compensation data to determine if a potential pattern or practice of discrimination exists?**

**ANSWER:** Federal contractors should conduct a statistical significance test. The tests determine whether a statistically significant disparity exists between the mean compensation of two groups (i.e., minorities vs. non-minorities; women vs. men). This analysis includes the *t*-test and Fisher's Exact Test, depending on the size of the group. Then, a cohort analysis or multiple regression analysis is conducted to ensure statistically significant differences in pay can be explained by factors other than race or gender (e.g., performance, time in job, time with company, number of years experience).



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**QUESTION:** If I am audited, how long do I have to submit my plan to the OFCCP?

**ANSWER:** You will receive a certified letter with a return-receipt that says you have 30 days from the day you sign for the letter to submit your plan. Please contact us ASAP so we can assist you with the AAP submission along with the compensation analysis.

**QUESTION:** What is the impact of the new application definition?

**ANSWER:** Regulations went into effect in February 2006 that require contractors to solicit race and gender from all job seekers who meet the four prongs of the internet applicant definition:

- Internet or other electronic means were used to recruit for position
- The expression of interest was considered for the position
- The expression of interest met the basic qualifications for the position
- The job seeker did not withdraw from the process (prior to receiving an offer)

Additional requirements are imposed on contractors to retain expressions of interest when the job seeker is considered for a position, or when employment tests are used.

**QUESTION:** What information do I need to retain in regards to database searches under the new applicant definition?

**ANSWER:** The information retained depends on if the search is performed on an internal or external database. The following information must be retained for each type of search:

### Internal

- Each resume added to the database
- Date of each resume added to the database
- Position for which each search was made
- Date of each search

### External

- Position for which each search was made
- Substantive search criteria used
- Date of the search
- Resumes that met the basic qualifications who are considered

Complying with the new regulations can be confusing. Berkshire's expert can analyze your processes and recommend procedures to ensure compliance with this new definition. Please call 800.882.8904 x 2001 for more information.

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